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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz

Summary

Indigenous women experience a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses. The present report is a study on the situation of indigenous women globally. It focuses on the common themes and patterns experienced by indigenous women across all regions.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Council resolutions 15/14 and 24/9. The Special Rapporteur provides a summary of her activities since her previous report to the Council (A/HRC/27/52) and undertakes a thematic analysis of violations against indigenous women and girls.

II. Activities of the Special Rapporteur

A. Participation in international conferences

2. The Special Rapporteur participated in a number of international dialogues and conferences:

(a) The Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, with which she coordinated her work, including by holding parallel meetings with indigenous peoples and organizations during their regular sessions;

(b) The fourteenth session of the Permanent Forum on Indigenous Issues, held in New York in April and May 2015, during which she shared her views on indigenous peoples' right to self-determined development and economic, social and cultural rights;

(c) The international expert group meeting on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples, in January 2015;

(d) The first session of the Open-ended intergovernmental working group in charge of elaborating a legally binding instrument on transnational corporations and other business enterprises with respect to human rights, in July 2015, at which she delivered the keynote speech.

B. Country visits

3. From 20 to 28 November 2014, the Special Rapporteur visited Paraguay. She noted that the country had ratified all the core international and regional human rights instruments, but observed a number of issues relating to the violations of the rights of indigenous peoples, with the foremost concern being the security of their rights to lands, territories and resources.

C. Report on international investment and trade regimes

4. The Special Rapport will present a thematic report on international investment and free-trade regimes and their impact on the rights of indigenous peoples to the General Assembly at its seventieth session.

III. Rights of indigenous women and girls

5. Indigenous women experience a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses. That spectrum is influenced by multiple and intersecting forms of vulnerability, including patriarchal power structures; multiple forms

of discrimination and marginalization, based on gender, class, ethnic origin and socioeconomic circumstances; and historical and current violations of the right to self-determination and control of resources.

6. Despite many barriers to inclusion, indigenous leaders and advocates have made significant strides in achieving recognition of indigenous peoples' rights and perspectives, including the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the establishment of the Permanent Forum on Indigenous Issues, the mandate of the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples. Indigenous women actively participated in the processes that gave birth to all those mechanisms and thus feel some ownership over the Declaration and the mechanisms.

7. All the provisions of the Declaration apply equally to indigenous women and indigenous men. Article 22 (2) specifically provides that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. In the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, which focused on indigenous women, the participating Heads of State and Government, ministers and representatives of Member States invited the Human Rights Council to consider examining the causes and consequences of violence against indigenous women and girls, in consultation with the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the rights of indigenous peoples and other special procedures mandate holders.[1]

8. Despite the progress made, systematic attention to the specific vulnerability of indigenous women has remained limited in relation to the scale of abuses against them. Furthermore, what international attention has been given to the issue has not sufficiently focused on the nexus between individual and collective rights, nor on how intersecting forms of discrimination and vulnerability contribute to ongoing abuses of indigenous women's rights. That has created a gap that has contributed to ongoing widespread impunity in relation to the rights of indigenous women and girls.

9. There have been some promising signs of progress towards closing that gap, such as the efforts taken by indigenous women to empower themselves by establishing their own organizations and networks, and making their issues more visible at national and global levels. Indigenous women's participation in the United Nations world conferences on women has increased with time, the highlight being the conference in Beijing in 1995, where participants ensured references to indigenous women and achieved the adoption of the Beijing Declaration of Indigenous Women, which has served as a guiding framework in many of their subsequent efforts to build and strengthen their organizations. It must be recognized that the United Nations has established a solid gender equality and women's rights regime, which has opened up more possibilities for indigenous women to engage in debates on gender issues. Several Special Rapporteurs, including the previous rapporteurs on indigenous peoples' rights, have contributed through raising awareness of issues facing indigenous women and have made relevant recommendations.

10. To contribute to addressing any continuing gaps in monitoring and implementing the Declaration on the Rights of Indigenous Issues, the Special Rapporteur dedicates the present report to the issue of indigenous women and girl's rights. While recognizing the great diversity in the experiences of indigenous women, she will take a global approach,

[1] See General Assembly resolution 69/2, para. 19

focusing on common themes and patterns experienced by indigenous women across regions. The Special Rapporteur will highlight examples of specific rights violations and issues from different countries, which are illustrative but not exhaustive. In analysing the situation of indigenous women, she will consider both the gendered forms of violations against indigenous women and the gendered effects of human rights abuses that target indigenous communities as a whole. In that way, the Special Rapporteur hopes that the forms of oppression, discrimination and violence that indigenous women face —because they are women and because they are indigenous — can be better understood.

A. Collective rights

Self-determination

11. A cornerstone of the Declaration on the Rights of Indigenous Peoples, self-determination is defined as both a choice to determine political status, as well as the right to have autonomy over economic, social and cultural development. Self-determination is a right in itself and has been conceptualized as a precondition for the fulfilment of other rights.

12. When examining the rights of indigenous women and girls, it is vital to consider the unique historical experiences of indigenous communities. Many forms of violence and abuse against indigenous women and girls have a strong intergenerational element. Violations of the broad right to self-determination of indigenous peoples are historically and currently endemic. Those have included gross and sustained assaults on the cultural integrity of indigenous peoples; denigration and non-recognition of customary laws and governance systems; failure to develop frameworks that allow indigenous peoples appropriate levels of self-governance; and practices that strip indigenous peoples of autonomy over land and natural resources. Those patterns of violations are vividly exemplified by colonization, but have also been perpetuated by post-colonial power structures and State practices. Those violations of the right to self-determination have been highly detrimental to the advancement of the rights of indigenous women and girls in a number of ways.

13. The response of indigenous communities to attacks against self-determination has, at times, additionally subjugated the rights of women. In the battle for indigenous communities to assert their right to self-determination, women's rights have often been considered divisive and external to the indigenous struggle and connected to "external values" or "Western values" that privilege individual over communal rights. Such a false dichotomy between collective and women's rights has, paradoxically, further entrenched the vulnerability of indigenous women to abuse and violence. Indigenous women are therefore stripped of their right to self-determination by both violations against their collective rights, as members of indigenous communities, and violations against their individual rights, as sub-collectives within those communities.

14. Such multiple victimization and the denial of the agency of indigenous women has had a pronounced impact on the prevalence of violence and abuses through the entrenchment of power structures that create and perpetuate systematic vulnerability. The further loss of women's agency caused by those violations then negatively impacts collective efforts to fight group rights, thereby contributing to negative cyclical patterns.

Land rights

15. A strong link to the land, territory and natural resources is a characteristic that is commonly associated with indigenous peoples. Despite relevant provisions in international human rights law, indigenous peoples experience weak protection of their land and property

rights, which exposes them to risks of displacement, expropriation and exploitation. Indigenous peoples inherent the right to the land that they traditionally occupy and use. They often do not hold formal titles to their land and their right to such land is one of the rights most violated. That allows Governments to impose destructive development projects or to lease and sell indigenous land without obtaining their free, prior and informed consent. Large-scale economic projects have been constructed on indigenous lands. Additionally, mass tourism has been encouraged in areas that are of significance to indigenous peoples. The implementation of those projects has repeatedly caused forced displacement and migration, ecological degradation and armed conflicts. Furthermore, the commodification of land that is inherent in such practices is an assault on indigenous cultures and the importance placed on land.

16. Land appropriation is not gender neutral and indigenous women's rights interact with violations of collective land rights. In indigenous communities where matriarchy and matrilineal practices exist, the loss of land will likewise undermine indigenous women's status and roles. The gendered effects of those violations become manifest in situations where indigenous women lose their traditional livelihoods, such as food gathering, agricultural production, herding, among others, while compensation and jobs following land seizure tend to benefit male members of indigenous communities. The loss of land and exclusion of women can create vulnerability to abuse and violence, such as sexual violence, exploitation and trafficking. Additionally, the secondary effects of violations of land rights, such as loss of livelihood and ill health, often disproportionally impact women in their roles of caregivers and guardians of the local environment.

17. External threats to indigenous land rights are not the only cause of abuses of women's rights in relation to land. The roles that women hold within indigenous communities and the way that some indigenous property frameworks reflect patriarchal power structures. Indigenous women commonly experience significant barriers to holding and inheriting land, especially when they are widowed.

B. Economic, social and cultural rights

Poverty

18. Indigenous peoples account for 5 per cent of the world's population, while representing 15 per cent of those living in poverty. As many as 33 per cent of all people living in extreme rural poverty globally are from indigenous communities.[2] Those figures are particularly alarming given the wealth of natural resources that are located within indigenous territories. That level of poverty is a violation of indigenous people's rights to development, as well as their economic and social rights to an adequate standard of living, housing, food, water, health and education. Such poverty is deeply interrelated with abuses of land and self-determination. The denial of self-determination in relation to development pathways and control over natural resources is also a central causal factor in the prevalence of poverty among indigenous communities. It is related to and mutually reinforced by the exclusion of indigenous people's perspective and agency from dominant development paradigms.

19. High unemployment is an important issue in relation to the poverty experienced by indigenous communities, as indigenous peoples are disproportionally represented within the world's unemployed. When indigenous people are employed they often face wage

[2] United Nations Development Programme (UNDP), *Sustaining human progress: reducing vulnerabilities and building resistance*, Human Development Report 2014, p. 3.

discrimination and exploitation in the workforce, which further fuels poverty. The following are some examples of those trends:

(a) In Australia, the indigenous unemployment rate was 15.6 per cent in 2006, that is, just over three times higher than the non-indigenous unemployment rate, while the median indigenous income was around half of the non-indigenous income;

(b) In the western provinces of Manitoba, British Columbia, Alberta and Saskatchewan, Canada, unemployment among indigenous people was as high as 13.6 per cent, but stood at only 5.3 per cent among the non-indigenous population;

(c) In New Zealand, the unemployment rate for the Maori is more than twice as high as the national average (7.7 per cent compared to 3.8 per cent) and the income of indigenous households is 70 per cent that of the national average.[3]

20. Some of the poverty reduction initiatives put in place to support indigenous communities are not always culturally sensitive and are therefore ineffective. For example, the practice of providing conditional cash transfers to poor indigenous families in exchange for compliance with preconditions, such as sending their children to school or requiring pregnant women to go for check-ups and to deliver in rural clinics or hospitals. Such practices have tended to be blind to the cultural values of indigenous peoples and also do not address the specific root causes of poverty.

21. Indigenous women are directly affected by poverty and weaknesses in programmes designed to tackle it, as well as by unemployment trends and wage-related discrimination. The multiple forms of discrimination, based on gender, age, socioeconomic situation and ethnic origin, experienced by indigenous women make them highly vulnerable to poverty. In addition, the overall poverty experienced by indigenous peoples tends to have a disproportionate impact on women, due to their role as caregivers and managers of resources.

Right to food

22. Food insecurity is not well-managed or understood within indigenous peoples due to a severe lack of relevant data. However it is widely recognized that indigenous people experience significant food insecurity and therefore suffer with widespread violations of their right to food. A range of interconnected and mutually reinforcing factors contributes to significant levels of food insecurity. As identified by the Food and Agriculture Organization of the United Nations, loss of a culture, land and insecure access to lands, territories and natural resource have been key drivers of this phenomenon amongst indigenous communities. Like poverty, violations of the right to food affect indigenous women directly and also have a disproportionate impact on them because of their roles as food and water providers, caregivers and managers of resources.

23. There is an emerging trend whereby indigenous peoples' lands are being grabbed by political and business actors who want to set up industrial food production farms or lands for production of biofuels, such as sugar cane and jatropha. Indigenous peoples' livelihoods such as rotational agriculture, pastoralism, hunting and gathering which have ensured food security for them are now increasingly being threatened. These have lead to the destruction of indigenous women's livelihoods that are land-based.

[3] Permanent Forum on Indigenous Issues, *State of the world's Indigenous peoples*, 2010.

Right to education

24. Indigenous peoples, in particular women, tend to have low levels of educational attainment and literacy compared with non-indigenous populations. That situation is a violation of the right to everyone to an education. Such violations of the rights of indigenous persons to an education are multi-dimensional and brings into consideration the issues of access, quality and inclusion.

25. Indigenous children's inability to access education is generally caused by the geographical and political marginalization of indigenous communities. When education is available, it is often blind to the specific needs of indigenous children. Curricula are often not taught in indigenous languages, which undermines indigenous children's ability to achieve school readiness and express their cultural identity in school. National school curricula tend to have very little, if any, focus on indigenous peoples, their issues and histories. Some national curricula even reinforce negative cultural stereotypes about indigenous peoples and indigenous students frequently find that the education provided by the State promotes individualism and a competitive atmosphere, rather than communal ways of life and cooperation. It is also common for indigenous children to experience racism and discrimination and ethnically motivated bullying in school. Furthermore, the education available to indigenous children is not always of adequate quality. The physical buildings in which indigenous children are educated can also fail to be fit for purpose, and teaching staff and materials may also be of poor quality.[4]

26. Some indigenous peoples prefer to set up their own indigenous schools, which ensure that traditional knowledge holders are involved in teaching and their culture is valued. In some countries, indigenous peoples initiate the setting up of schools because the State does not provide schooling in their communities owing to the remoteness of the location or the small population size. The Special Rapporteur noted that in some indigenous territories which have become sites of armed conflicts, the army or paramilitary personnel occupy schools, which are therefore required to close down.

27. As a result of those factors, indigenous children often experience significant gaps in educational attainment compared with non-indigenous populations and dropout rates are high among indigenous children. For example, in Bolivia (Plurinational State of), Ecuador, Guatemala, Mexico and Peru, there is an average gap of three years between indigenous and non-indigenous children in relation to the schooling undertaken by those aged 15 or older. Those trends are mirrored in other countries with indigenous populations. The gaps between indigenous and non-indigenous educational attainment are also reflected in the proportion of those attending post-secondary education institutions.[5]

28. In that connection, indigenous girls tend to be more disadvantaged than indigenous boys.[6] In additional to the factors impacting overall indigenous dropout rates, girls can experience a number of additional barriers. Firstly, their role within communities often means that they are expected to help with domestic and care responsibilities. Secondly, indigenous girls may also be subjected to child marriage, so that their roles as wives and

[4] See UNDP, Human Development Report 2014 (see footnote 2); Permanent Forum on Indigenous Issues, *State of the world's Indigenous peoples*, 2010; and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA), International Labour Organization (ILO) and Office of the Special Representative of the Secretary-General on Violence against Children, *Breaking the silence on violence against indigenous girls, adolescents and young women: a call to action based on an overview of existing evidence from Africa, Asia Pacific and Latin America*, May 2013.

[5] Permanent Forum on Indigenous Issues, *State of the world's Indigenous peoples*, 2010.

[6] Ibid.

sometimes child bearers mean that they have to leave school. Thirdly, indigenous girls may face the risk of sexual violence and rape during long journeys to school, as evidenced in the report of the Working Group on Discrimination against Women in Law and in Practice on its visit to Peru.[7] The significance of this barrier to education is exacerbated by the presence of legislation in some States that prohibits women and girls from being able to seek abortion services, even if they become pregnant following rape.[8]

Right to health

29. There are examples of profound physical and mental health inequalities between indigenous and non-indigenous people. For example:

(a) In the United States of America, a Native American is 600 times more likely to contract tuberculosis than a non-Native American;

(b) Worldwide, over 50 per cent of indigenous adults suffer from type 2 diabetes;

(c) Indigenous peoples' life expectancy is up to 20 years lower than their non-indigenous counterparts;

(d) Indigenous peoples experience disproportionately high levels of maternal and infant mortality, malnutrition, cardiovascular illnesses, HIV/AIDS and other infectious diseases, such as malaria and tuberculosis;

(e) Suicide rates of indigenous peoples, particularly among youth, are considerably higher in many countries. For example, the suicide rate for Inuit in Canada is around 11 times the national average;

(f) Child mortality rates among indigenous communities are usually above the national average.[9]

30. Many of those poor health outcomes are influenced by modifiable risk factors, such as drug abuse, poor nutrition and alcoholism, which have worryingly increased within indigenous communities. The increase in risk factors has been identified as being strongly connected with the historical colonization and dispossession of indigenous peoples, which has resulted in the fragmentation of their social, cultural, economic and political institutions.[10]

31. Against the backdrop of growing physical and mental health concerns, non-indigenous health systems often do not take into account the indigenous concept of health, and therefore create barriers to access by indigenous people. Epidemiological data often fails to capture information on indigenous communities and the socioeconomic determinants of health, thereby making them "invisible". If data is included, it is generally not disaggregated, so that the specific needs of indigenous women are not understood in the context of national healthcare policy and planning. In addition, there are often no clear integration mechanisms for health care personnel, communities, traditional healers, policy makers and government officials. Furthermore, the facilities available to indigenous communities and women are also often not suitable to their specific needs and cultural preferences.

32. Women acutely feel the low levels of health within indigenous communities. They are disproportionately affected by illness owing to reduced coping capacity caused by the

[7] A/HRC/29/40/Add.2.
[8] Ibid.
[9] Permanent Forum on Indigenous Issues, *State of the world's Indigenous peoples*, 2010.
[10] Ibid.

denial of broader rights. Women also play a primary role in overseeing the health and well-being of their families and communities, and can be particularly affected by the suffering of children and other family members. Their gender and role as child-bearers also make them vulnerable to specific health difficulties.

33. A grave gender-specific health concern is the issue of indigenous women's sexual and reproductive health. Indigenous women face many barriers to sexual and reproductive rights, such as a lack of culturally appropriate sexual and reproductive health advice, geographical access to facilities and lack of supplies, such as contraceptives, poor quality care and, in some cases, legislation banning abortion services, even in cases of pregnancy following rape. That leads to higher-than-average maternal mortality rates; disproportionate representation of indigenous girls in teenage pregnancy indexes; low voluntary contraceptive usage; and high rates of sexually transmitted diseases and HIV/AIDS.

34. There have also been severe historical violations of indigenous women's rights in relation to sexual and reproductive rights in the context of denial of their rights to self-determination and cultural autonomy. Those violations include forced sterilization of indigenous women and attempts to force indigenous women to have children with non-indigenous men as part of policies of cultural assimilation. Indigenous women may also face barriers to preventive services that support their right to health, such as screening for ovarian and breast cancer.

Cultural rights

35. Abuses of indigenous people's cultural rights are endemic, owing to a sustained unwillingness on the part of many States to celebrate indigenous culture or to promote the use of indigenous languages in schools as part of the cultural diversity of citizens within their borders. That has a cross-cutting effect on the rights of indigenous women and children. Lack of respect for indigenous cultures is evident across all violations of indigenous peoples and is a fundamental part of the experiences of indigenous women and girls. The commodification of the cultures and cultural heritage of indigenous peoples is a common experience for many indigenous peoples. For example, indigenous territories have been declared World Heritage Sites without their free, prior and informed consent, thereby turning them into tourist areas. In most cases, the people who reap the biggest benefits are foreign or national travel and tour agencies or hotel owners. In those cases, indigenous women often end up as menial employees or entertainers for tourists. At worst, prostitution is encouraged and criminal syndicates promote trafficking of indigenous women and girls.

C. Civil and political rights

Racism and racially motivated discrimination

36. As indicated in the concluding observations of the Committee on the Elimination of Racial Discrimination, indigenous peoples face persistent and multifaceted forms of racism and racial discrimination. Such discrimination is intimately interconnected and mutually reinforcing with the spectrum of violations experienced by indigenous peoples.

37. Indigenous women and girls experience racism and racial discrimination as members of indigenous communities. Such violations of their rights also increase their vulnerability to other human rights abuses, as they are part of the intersecting forms of discrimination and inequality that they face.

Participation in public and political life

38. Indigenous women have the right to participate in public and political decision-making processes. That right stems broadly from the right to self-determination, as well as

from the provisions of the Convention on the Elimination of All Forms of Discrimination against Women. However, in reality, indigenous women are often excluded from both indigenous decision-making structures and local and national political processes in States. As highlighted by the Committee on the Elimination of Discrimination against Women, there are very few indigenous women in national and local political processes and in some countries, there are none at all.[11] Indigenous power structures and self-governance agreements tend to be patriarchal and exclude the involvement and perspectives of women.

39. Female indigenous human rights defenders have faced particular challenges when exercising their right to participate in public life. Female human rights defenders play a vital role in protecting women in indigenous communities and can be valuable resources to States in the context of balancing their duty to protect all women and the need to respect the right to self-determination and autonomy of indigenous communities. However, in a number of countries, the activities of female human rights defenders from indigenous communities have been criminalized and they have been subjected to severe forms of violence. For example, in Oaxaca, Mexico, female human rights defenders were reported to have been killed recently.[12]

Indigenous women and criminal justice

40. Data and comprehensive comparative research on indigenous women and the criminal justice system are very underdeveloped. However, reports suggest that indigenous women are overrepresented in the criminal justice systems and the number of indigenous women in custody is increasing in a number of countries, including Australia, Canada and New Zealand. What limited data is available suggests that the incarceration of women is increasing at a significantly quicker rate than that of men. Some relevant statistics include the following:

(a) Estimates suggest that Maori women in New Zealand represent 40 to 60 per cent of the female prison population, while the Maori people represent around 15 per cent of the general population;[13]

(b) Maori women were also overrepresented for imprisonment and intensive supervision (accounting for 51 per cent of sentences imposed) and underrepresented for more lenient dispositions, such as reparation orders (39 per cent) and fines and discharges (both 33 per cent);[14]

(c) In 2010, 30 per cent of incarcerated women in Australia were reported to be indigenous;[15]

(d) Between 2000 and 2010, in Australia, the imprisonment rate for women increased by 60 per cent, compared to 35 per cent for men;[16]

(e) From 1996/97 to 2001/02, in Canada, the number of federally sentenced aboriginal women increased by 36.7 per cent, compared with 5.5 per cent for aboriginal men.[17]

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[11] Concluding observations of the Committee on the Elimination of Discrimination against Women.

[12] Amnesty International, "Eyewitnesses to killing of defenders harassed", 10 February 2015; Office of the United Nations High Commissioner for Human Rights, "Human rights defenders continue to pay with their lives in Mexico, warn UN experts", press release, 12 May 2010.

[13] Native Women's Association of Canada, "Aboriginal women and the legal justice system in Canada", issue paper (June 2007).

[14] Ibid.

[15] Creative Spirits/Jens Korff, "Aboriginal prison rates" (8 June 2015).

[16] Ibid.

41. Those trends have a number of implications in relation to the human rights of indigenous women and girls. When looked at through a human rights lens, it is clear that many indigenous women and girls have difficulties with the law because of prior violations of their human rights. Issues associated with disregard for collective and individual indigenous rights — such as abuse of women, mental health problems and poverty — have been identified as causal factors in criminal behaviour among indigenous women. Furthermore, issues relating to indigenous women's access to justice, as discussed below, must be considered within criminal justice.

42. Indigenous women may also be more vulnerable than non-indigenous women once they are in detention. There have been reports of a lack of women's facilities to accommodate indigenous women, which means that they could be housed with men. That leaves them vulnerable to violence and unable to access gender-specific programmes and support. There have also been reports of racism and discrimination against indigenous women in prisons, as well as inadequate access to health services.

Right to remedy

43. Indigenous women are routinely denied their right to remedy for abuses of their human rights. There is a historical and group dimension to the denial of women's right to remedy. The failure of Governments to acknowledge and provide remedy for historical abuses of indigenous communities contributes to the ongoing vulnerability of indigenous women.

44. Currently, in numerous countries, indigenous women are marginalized in both national and indigenous justice systems. At the national level, judicial remedies and mechanisms are often not available to indigenous women owing to a range of cultural and linguistic factors. Indigenous justice systems, on the other hand, tend to be male dominated and do not always allow adequate space for women's voices or participation. While customary or informal justice systems differ from one indigenous community to another, they may fail to offer genuine recourse to justice. For example, the Aboriginal Justice Inquiry of Manitoba, Canada, identified bias in favour of the male partner in indigenous domestic abuse situations and criticized Chiefs and Councils for being unwilling to address the plight of women suffering abuse at the hands of husbands or partners.

45. The challenges facing indigenous women in seeking justice can be complicated by the increase in private forms of remedy for violations perpetrated by business-related actors. As reported by MiningWatch Canada and Amnesty International at the third annual Forum on Business and Human Rights, held in 2014, private companies often offer women who have been victims of extreme violence, such as gang rape, access to corporate-led grievance mechanisms. A precondition for accessing such mechanisms is signing an agreement not to sue the company, so that judicial remedy is blocked. There have been reported cases of women receiving compensation that was shockingly disproportionate to the severity of the violations of their human rights.

D. Multiple forms of violence

46. The issue of violence against women is indivisibly linked to the categories of rights discussed above. In fact, the endemic violations of collective, civil and political, and economic, social and cultural rights can be seen as constituting a form of structural violence

[17] Native Women's Association of Canada, "Aboriginal women and the legal justice system" (see footnote 13).

against indigenous women and girls. Structural violence results in women being victimized by the realities of the circumstances of their everyday life and routinely excluded from the rights and resources otherwise guaranteed to citizens. Structural violence is interlinked and mutually reinforcing with other forms of violence, as discussed below.

Sexual violence

47. Indigenous women are significantly more likely to experience rape than non-indigenous women. It has been estimated that more than one in three indigenous women are raped during their lifetime. Behind these shocking statistics are multiple forms of sexual violence against indigenous women by a multitude of actors in different geographical regions. Coordinated and comparative information on sexual violence is very limited, due in part to significant underreporting and a lack of investment in disaggregated data collection that include indigenous women and communities. That makes analysis of systemic level prevalence and trends very difficult. Different forms of sexual violence have been reported, including the following:

(a) Rape, which can be perpetrated by individuals known to the indigenous woman and girl, as a form of control, punishment and/or abuse;

(b) Large numbers of indigenous women and girls work in domestic households. Domestic work is outside of the regulatory framework for employers, which leaves women and girls isolated and vulnerable to rape and abuse by employers;

(c) Women have reportedly been subjected to harassment, extortion and rape by State officials at border crossings. For example, Miskito women, whose territories straddle Nicaragua and Honduras and who cross national borders every day to work their lands or to gather medicinal plants, are routinely exposed to sexual violence. In addition, military officials may perpetrate sexual violence as a weapon to weaken the resolve of indigenous communities in militarized disputes over land and resources;

(d) In the United States, large numbers of indigenous women have experienced rape perpetrated by men outside of their communities. According to statistics, Native American and Alaska Native women are more than 2.5 times more likely to be raped or sexually assaulted than other women in the United States; and 86 per cent of the reported cases of rape or sexual assault against American Indian and Alaska Native women are perpetrated by non-Native men;

(e) Indigenous women have reportedly been subjected to sexual violence by men from other indigenous groups. In the Great Lakes Region of Africa, one Batwa woman reported that Bantu men violated Pygmy women from the Congo, claiming that they did it to treat medical complaints;

(f) There have been reports from NGOs that indigenous women have been raped by individual and multiple perpetrators in the context of business activities on indigenous lands.[18]

[18] See, for example, Mairin Iwanka Raya. *Indigenous women stand against violence: a companion report to the United Nations Secretary-General's study on violence against women* (International Indigenous Women's Forum, 2006), Permanent Forum on Indigenous Issues, *State of the world's Indigenous peoples*, 2010, UN-Women and others, *Breaking the silence* (see footnote 4), Amnesty International, *Maze of injustice: the failure to protect Indigenous women from sexual violence in the USA* (New York, 2007), and Reports from non-governmental organizations to the 2014 United Nations Forum on Business and Human Rights.

48. The variety of forms of sexual violence reflects, to some extent, the different experiences of indigenous women and girls around the world. It also reflects the multidimensional ways in which indigenous women are vulnerable to violence and the severe threat of revictimization.

Gender-based killings

49. Gender-based killings have been defined by the Special Rapporteur on violence against women, its causes and consequences, in her 2012 report (A/HRC/20/16), as direct or indirect gender-motivated killings, which take place in the family, in communities and which are sometimes perpetrated or condoned by States through act and/or omission. She describes such killings as an extreme form of violence, which is part of a continuum of violence that is influenced by the sources of structural vulnerability in place in women's lives. In her report, the Special Rapporteur described how the phenomenon can impact indigenous women, as a result of their social, cultural, economic and political marginalization and oppression that culminates in violence. Gender-based killings of indigenous women can take a variety of forms, including murder within communities; retaliation for defending their human rights; conflict-related; in the context of displacement from their communities due to dispossession of land; reports of "missing women" who are assumed to have been killed.

50. The Native Women's Association of Canada and Amnesty International document and report cases of missing and murdered indigenous women and girls in Canada. Those reports have been submitted to the Permanent Forum on Indigenous Issues, the Committee on the Elimination of Discrimination against Women, the Inter-American Commission on Human Rights, as well as to the previous and current Special Rapporteurs on the rights of indigenous peoples. Statistics from the Royal Canadian Mounted Police, in 2014, indicate that indigenous women are four times more likely to be murdered than non-indigenous women. The report also states that 1,017 indigenous women and girls were murdered between 1980 and 2012.[19] The bodies mentioned above have put forward several recommendations, including the following: (a) a national action plan to end violence against indigenous women, which addresses the root causes of violence and identifies holistic, culturally-appropriate ways to prevent violence and support those affected by violence; (b) a national public inquiry into missing and murdered indigenous women, focusing on exposing the nature of that form of violence and on ensuring Government and police accountability for an effective and coordinated response; and (c) regular, comprehensive data collection on violence against indigenous women in official crime statistics. Unfortunately, the long-awaited national public inquiry has not yet taken place. As recommended by the previous Special Rapporteur on the rights of indigenous peoples and the Committee on the Elimination of Discrimination against Women, the Canadian Government should undertake a full, independent inquiry into the cases of missing and murdered aboriginal women and girls.[20]

Violence in the context of conflict

51. Indigenous women are often caught in the crossfire of conflict situations and subjected to militarized violence. Conflicts may be between different ethnic groups and may also involve government forces and business actors. Indigenous women and girls have

[19] Royal Canadian Mounted Police, *Missing and murdered aboriginal women: a national operational overview*, 2014.

[20] See, for example, A/HRC/27/52/Add.2, para. 89; CEDAW/C/OP.8/CAN/1, recommendations, part D, p. 51.

been victims of gender-based violence in conflicts for example in Colombia, Guatemala, Mexico, Nicaragua, Peru, the Philippines and Nigeria.

52. As noted by the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights, the situation of indigenous women and girls is particularly critical in the context of armed conflict, given that they are already exposed to multiple forms of discrimination. That again shows the impact that intersecting forms of inequality and discrimination can have on indigenous women.

53. Examples of violence against women in a military context include the following:

(a) In Colombia, indigenous women and girls are commonly subjected to patterns of rape, forced prostitution and exploitation in the context of occupation of indigenous land;

(b) In Bangladesh, indigenous women face multiple forms of discrimination and there is a high prevalence of sexual violence, including as a weapon in community conflict in rural areas;

(c) In the States of Karen, Karenni, Mon and Shan, Myanmar, indigenous women are in daily contact with the soldiers of the Burmese army that occupies the area. The Rapporteur has found that rape of indigenous women is not only a form of "entertainment" for the soldiers, but part of a strategy to demoralize and weaken the indigenous communities. Soldiers reportedly use rape to coerce women into marriage and to impregnate women as part of the forced cultural assimilation policy;

(d) In Fiji, India, Myanmar, Nepal, the Philippines, Thailand and Timor-Leste, the militarization of conflict over indigenous land has led to gang-rape, sexual enslavement and killing of tribal women and girls;

(e) There have been reports of indigenous women in the Democratic Republic of the Congo being victims of rape by armed groups and the military;

(f) In north-western Kenya, British soldiers stationed in the area since the 1980s have reportedly raped more than 1,400 Masai and Samburu women. Rape survivors and their families still suffer from the legacy of those attacks, such as stigmatization of families with mixed-race children.[21]

Violence in the name of tradition

54. As discussed by the Special Rapporteur on violence against women, its causes and consequences in her 2007 thematic report, culture-based identity politics can be used to justify violence against women in the name of traditional practices and/or values.[22] Practices commonly carried out in the name of tradition, such as female gender mutilation and child marriage, impact some but not all indigenous communities. The fact that those traditional practices cut across religious, geographical and ethnic characteristics demonstrate that there are multidimensional causal factors and that no one factor attributed to the identity of women makes them vulnerable. Violations suffered by indigenous women and girls must be viewed within the context of the broad spectrum of violations experienced and their specific vulnerabilities as members of indigenous communities.

55. The World Health Organization (WHO) estimates that between 100 million and 140 million women and girls worldwide have been subjected to female gender mutilation.

[21] Mairin Iwanka Raya, *Indigenous women stand against violence* (see footnote 18), UN-Women and others, *Breaking the silence* (see footnote 4).

[22] See A/HRC/4/34.

Female genital mutilation has been documented mainly in Africa, but also in some countries in the Middle East, Asia, and Central and South America. As recognized by WHO, there are no benefits to female genital mutilation; in fact, the procedure can have many negative consequences for women, including infection, complications in childbirth, pain, infertility and cysts, as well as their overall disempowerment within society. There is very little information about the prevalence and drivers of female genital mutilation among indigenous communities, but it is known to take place in some but not all indigenous communities.

56. Similarly, little disaggregated information is available about the specific dynamics of child marriage in indigenous communities, but it is known to take place in some communities. Much of the literature on child marriage demonstrates a strong link with poverty, therefore, the broader human rights violations of indigenous women and girls are likely to be strong causal factors for child marriage. Child marriage is not only a form of violence, but also a violation of the child's rights to education and family life. Child marriage can also lead to violations of the rights to life and health, as young girls often experience complications with pregnancy and childbirth, which can result in death. In addition, child marriage creates vulnerability to marital rape.[23]

Domestic violence

57. Information on domestic violence is limited due to underreporting and lack of investment in data collection. Nonetheless, available data suggests that indigenous women are significantly more likely to be victims of domestic violence than non-indigenous women.

58. Domestic violence can have grave consequences for victims, including mental health problems, substance abuse, severe health issues and difficulties in providing care to children. Those consequences may be felt more acutely by indigenous women owing to lack of access to support services and justice, as well as their specific cultural and economic circumstances.

59. Domestic violence must be considered within the context of the broader human rights abuses of indigenous communities. A number of potential root causes have been identified, many of which are linked to human rights issues specific to indigenous peoples and historical violations of their rights, including a violent family environment; abusive State policies at a young age; financial problems and poverty; unemployment; lack of education; poor physical and mental health; racism-induced stress; denial of rights to self-determination, land and culture, among others, leading to loss of identity and self-esteem; and a breakdown of community kinship systems and Aboriginal law. While nothing can negate domestic violence, which is a serious crime, strategies for its reduction and elimination must take into account both its causes and consequences through a holistic and human rights-based lens. Interventions such as support and recovery services must also be sensitive to the specific needs of indigenous women and girls.

Trafficking

60. Compelled by economic need, armed conflict and denial of self-determination and land rights in the context of major economic development projects, many indigenous peoples migrate from their home communities in rural areas to urban centres. Indigenous women and girls who leave their communities are highly vulnerable to trafficking, which

[23] See Human Rights Watch, section on child marriage, available at www.hrw.org/topic/womens-rights/child-marriage

can lead to multiple violations of their human rights, including severe economic and sexual exploitation and sexual violence. There are also cases of indigenous women being targeted by organized traffickers within their own communities. Reports of trafficking of indigenous women and children include the following:

(a) In the Miskitu communities of Nicaragua, indigenous women have reported the phenomenon of selling and trafficking of indigenous girls and boys, citing communitarian violence as the cause;

(b) In a number of Asian countries, including Cambodia, India, Nepal and Thailand, indigenous women are trafficked from their communities into domestic servitude or forced prostitution;

(c) Trafficking of indigenous women for the purpose of exploitation has been reported in Mexico;

(d) Indigenous women in Canada are reported to be at a greater risk of trafficking for the purposes of sexual exploitation than non-indigenous women.[24]

IV. Key challenges and promising practices

A. Key challenges

Gaps and weaknesses in monitoring systems and implementation

61. Systematic analysis of the conclusions of United Nations human rights mechanisms conducted for this report showed significant gaps and weaknesses in relation to the rights of indigenous women and girls. The Special Rapporteur appreciates the attention of other mechanisms and agencies, in particular special procedures mandate holders, treaty bodies and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), and hopes that the developing focus on indigenous women's rights continues to grow.

62. Gaps and weaknesses in some human rights and development monitoring mechanisms include:

(a) The lack of geographical balance in relation to the comments made by the different mechanisms;

(b) Failure to discuss the role that intersecting forms of vulnerability and discrimination plays in violations of the rights of indigenous women and girls;

(c) Limited exploration of the nexus between individual and collective rights;

(d) The absence of gender analysis when discussing issues that impact indigenous communities.

63. Similarly, a number of development and other policy mechanisms, including the Millennium Development Goals, the proposed sustainable development goals and the Beijing Platform for Action, have given disproportionally low attention relative to needs.

[24] See, for example, Mairin Iwanka Raya, *Indigenous women stand against violence* (see footnote 18); Arun Kumar Acharya and Manuel R. Barragan Codina, "Poverty and trafficking of Indigenous women in Mexico: some evidence from Chiapas State", *Journal of Sustainable Society*, vol. 1, No. 3, 2012, pp. 63-69; and Native Women on Canada Association, *Sexual exploitation and trafficking of aboriginal women and girls*, Literature review and key informant interviews (March 2014).

64. These gaps and weaknesses in the monitoring and implementation of the human rights of indigenous peoples contribute to a culture of impunity and render the violations of rights invisible to international and national policy makers and legislators.

A lack of disaggregated data

65. The effects of those gaps and weaknesses in monitoring are compounded by systemic weaknesses in national data collection systems in relation to understanding indigenous peoples. There is the lack of disaggregated population data, which includes statistics on indigenous women within these groups. In addition, specific information on human rights violations, including those perpetrated against women, is rarely available. That has impeded understanding and comparison of situations of indigenous women and girls, as well as the development of clear accountability structures. Deficiencies in understanding and accountability are powerful barriers to effective strategies for combatting violations of indigenous women's rights.

A lack of inclusive birth registration systems

66. Many countries do not have birth registration systems that robustly provide certification of the births of all indigenous children, which exacerbates the lack of monitoring and disaggregated data. Such lack of birth registration systems places indigenous children and people in a situation of increased vulnerability because they are invisible within the State system. Other consequences include no or limited access to social, health and educational services and increased vulnerability to statelessness or trafficking.

67. Lack of birth registration also compounds statistical gaps in relation to indigenous peoples and their correlative invisibility within political and policy debates.

Neo-liberal economic and development paradigms

68. Neo-liberalism is an economic paradigm that champions the power of market forces and argues that, if left unregulated, markets will deliver global development. Neo-liberalism grew in dominance in the latter part of the twentieth century and infiltrated development policy. The entry of foreign direct investments in indigenous territories to exploit mineral resources and establish mega-infrastructure projects without the free, informed and prior consent of the citizens impacted by market liberalization and deregulation has led to systematic violations of indigenous land rights and self-determination. The global dominance of neo-liberalism has led to development that is measured by overall growth figures, but which gives little weight to whether such development leads to a reduction in inequality or poverty alleviation therefore significantly disadvantaging vulnerable groups, such as indigenous peoples and women.

69. Another way in which neo-liberalism has affected indigenous peoples and women are related to the structural adjustment policies of the International Monetary Fund and the World Bank. Such policy interventions, which are based on neo-liberal doctrines, prescribe harsh fiscal austerity programmes as a remedy for economic underdevelopment and a high ratio of indebtedness in relation to gross domestic product. Dramatic decreases in government spending routinely result in cuts to vital services, which disproportionally impact the most vulnerable, including indigenous women.

Issues of jurisdiction

70. There are often complex relationships between the customary jurisdictions of indigenous communities and the national justice systems, which can have a number of implications for women who are victims of violations of their human rights. Firstly, the relationships can create confusion with regard to responsibility for incidences of violence

and discourage reporting by women. When women do come forward, there may be complicated tensions between jurisdictions relating to competence to prosecute, which can create delays and thereby prolong the suffering of the victim and discourage women from reporting violence in the future. Loopholes in the rules governing the relationship between jurisdictions can also make it possible for perpetrators to evade prosecution.

Community dynamics and stigma

71. Indigenous systems of governance and power structures are often highly gendered and may exclude women and their perspective from administration of justice and control over the development of social standards and decisions, which impacts women's vulnerability to abuses of their human rights. Indigenous communities tend to be tight-knit, which can serve to protect perpetrators and silence women, and there is also often a high level of stigma associated with being a victim of violence so that indigenous women are often afraid to report violence for fear of being ostracized within the community. Furthermore, the close-knit nature of indigenous communities and the social stigma of violence may restrict women's ability to seek justice within other jurisdictions.

B. Promising practices

72. Despite the significant constraints facing them, there are many instances where indigenous women having successfully mobilized to fight for their rights. Those successes have led to the development of promising practices in relation to the respect and protection of indigenous women. The following examples of good practice are illustrative and not exhaustive:

(a) As observed by the Special Rapporteur on violence against women, its causes and consequences, the tribal justice system of the Eastern Band of Cherokee Indians in the United States has an effective infrastructure to provide safety of women within their jurisdiction, including dedicated codes to address domestic violence and training for personnel of tribal law enforcement authorities, tribal courts, prosecutors and probation officers. Furthermore, tribal courts have ordered that offenders enrol in re-education programmes and tribes support programmes to encourage boys and young men to respect women;[25]

(b) Numerous tribes, such as the Eastern Band of Cherokee Indians, maintain the practice of banishing perpetrators of violence against women from their tribal jurisdictional boundaries. That has proven to be an effective sanction which prevents women and their children from being forced to flee their home due to violence. Banishment is a serious community sanction that cuts off perpetrators and sends a strong message about the protection of women and children in the community.[26] Several Kankanaey Igorot communities in the Cordillera region of the Philippines have customary laws that banish members who have committed rape. Thus, in those communities, incidences of rape are very low compared to urban areas and other provinces. The women of some Kalinga Igorot villages in the same region have succeeded in convincing their traditional leaders to abolish the discriminatory practices of bride price, dowry and arranged marriages;

(c) The Working Group on Discrimination against Women in Law and in Practice reported that some Latin American States formally recognize indigenous laws and

[25] See A/HRC/17/26/Add.5, para. 100.
[26] Ibid., para. 102.

courts in their constitutional laws, but that devolution of power was conditional on respect for and enforcement of women's rights by the indigenous legal system;[27]

(d) In Latin America, the use of quota systems to ensure the political representation of women has had some success. Bolivia (Plurinational State of), Colombia, Nicaragua, Panama and Peru, among others, have adopted electoral laws that include ethnic and gender quotas aimed at increasing indigenous women's participation in political processes. For example, the Act on Equal Opportunities for Women and Men of Peru specifically refers to the participation of indigenous women in public decision-making;[28]

(e) The Saskatchewan Provincial Court in Canada instituted a new court that addresses a critical barrier to access to justice by conducting court proceedings in the Cree language. The Cree Court takes into account traditional values when sentencing, encourages the participation of community leaders and explicitly acknowledges the cultural traditions of the First Nations. This innovative court structure reduces the negative impact of barriers to access to justice while, at the same time, realizing indigenous peoples' rights to self-determination and equal participation in the justice system;[29]

(f) A number of agencies and mechanisms within the United Nations system, including several special procedures mandates, treaty bodies and UN Women, have recently dedicated attention and resources to the issue of indigenous people's rights. For example, UN Women has included the needs of indigenous women in their engagement with the Open Working Group on Sustainable Development Goals, mainstreamed women's rights into the World Conference on Indigenous Peoples and delivered a range of regional and country level initiatives to indigenous women on economic empowerment, violence against women, political participation and broader capacity-building;[30]

(g) Since the early 1990s, several networks of indigenous women have been established in Australia, the Arctic, Latin America, North America, Africa and Asia, including Enlace Continental de Mujeres Indígenas de las Américas, Asia Indigenous Women's Network, African Indigenous Women's Organization, Sami Women's Organization. These groups have impacted policy debates through the sharing of experiences and joint advocacy on issues of concern.

V. Conclusions and recommendations

A. Conclusions

73. **Indigenous women and girls experience complex, multidimensional and mutually reinforcing human rights violations. Abuses of indigenous women's collective; economic, social and cultural; and civil and political rights are varied and severe. Those violations are alarming infractions on their own, but constitute a form of structural violence against indigenous women whereby they are victimized by the realities of the circumstances of their everyday life and routinely excluded from enjoying the rights and resources otherwise guaranteed to citizens. Indigenous women**

[27] A/HRC/29/40, para. 56.

[28] E/C.19/2013/10, paras 38-42.

[29] University of Colorado Law School, American Indian Law Clinic, Report on indigenous women's rights, prepared for the Special Rapporteur, 2015.

[30] UN-Women, "Submission to the United Nation Permanent Forum on Indigenous Issues on UN-Women's programmatic initiatives in support of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (2013-2014)", 2014.

also suffer from other forms of violence, including traditional practices, sexual violence, trafficking, domestic violence and gender-based killings.

74. Despite the severity and regularity of violations of the rights of indigenous women, the attention of much of the United Nations human rights and development policy architecture has been limited. Gaps and weaknesses in analysis include a lack of geographical balance, limited inclusion of collective rights, little exploration of intersectionality in relation to the vulnerability of indigenous women and a lack of exploration of the gender implications to rights issues affecting indigenous communities. There are, however, promising signs that the gap in monitoring indigenous women's rights is closing.

75. To protect the rights of indigenous women, both a paradigm shift and the development of a multidimensional approach is needed. States must find a way to strike a delicate balance between protection of indigenous women and respect for self-determination and autonomy of indigenous peoples. Engagement and consultation with indigenous women and girls is central to finding that balance.

76. The United Nations system must support Member States in striking that balance, as well as contribute to the paradigm shift needed through increasing attention to the needs of indigenous women and reconceptualizing rights issues to include the nexus between individual and collective rights, as well as the intersectionality between different forms of inequality and discrimination.

B. Recommendations

Recommendations to Member States

77. With regard to economic, social and cultural rights, Member States should:

(a) Improve access by indigenous peoples to education, with interventions targeted towards understanding and overcoming the specific barriers faced by girls;

(b) Improve access by indigenous peoples, including women and girls, to culturally sensitive health-care services; learn from and build on existing examples of the good practices promoted by the United Nations Population Fund and the Pan American Health Organization to develop an intercultural approach to health; and support reinforcement of traditional healing and health practices of indigenous peoples that have been proven to be effective;

(c) Pay particular attention to providing a range of sexual and reproductive health services to indigenous women and girls, with their free, prior and informed consent;

(d) Review and improve poverty-reduction programmes, such as conditional cash transfers, to ensure cultural and gender sensitivity;

(e) Invest in research that supports understanding of food insecurity among indigenous communities and develop programmes to ensure the rights of indigenous peoples to food;

(f) Develop educational materials that sensitize non-indigenous populations to the cultural realities of indigenous communities and women. Those materials should be integrated into school curricula and in human rights training for Government officials providing services to indigenous peoples, including the police, border guards and the judiciary, as well as health and education professionals.

(g) When developing initiatives to improve the economic, social and cultural rights, pro-actively engage with indigenous women and girls and other members of indigenous communities on how best to meet their needs; apply the principle of free, prior and informed consent to the development of all laws, policies and programmes;

78. With regard to civil and political rights, Member States should:

(a) Ensure that the birth of every indigenous child is formally registered in national systems;

(b) Develop interventions to increase the number of indigenous women in national and local political and public processes and explore the feasibility of implementing quota systems for indigenous women's representation in local and national politics;

(c) Explore ways to invest in the leadership capacity of indigenous women so that they can play more active roles in indigenous decision-making structures to protect women and girls within their communities;

(d) Ensure protection of the activities of all female human rights defenders;

(e) Consider the development of the special tribunals to ensure access to justice for indigenous women following abuses of their human rights. Such special provisions would allow for the individual needs of indigenous women to be met, the development of focal points to establish effective links with indigenous justice systems, greater recognition of specific cultural needs, as well as the accumulation of a systemic view of rights violations;

(f) Provide legal aid, interpretation and translation services, and culturally sensitive information about their rights and available remedies to all indigenous women and girls;

(g) Within the context of the implementation of the Guiding Principles on Business and Human Rights and the development of national action plans on human rights and business, ensure that judicial mechanisms are the primary means by which corporate violations of the rights of women and girls are remedied; and avoid legitimizing voluntary, private forms of remedy that do not provide effective access to justice for violations of the rights of women;

(h) Ensure that due process is undertaken in relation to all indigenous women who enter the criminal justice system;

(i) In relation to the overrepresentation of indigenous women in national criminal justice systems, invest in country-specific research into the root causes; develop targeted prevention programmes based on such research; and, where possible, consider alternatives to detention. When indigenous women are detained they must still be afforded protection based on their human rights.

79. With regard to violence against indigenous women and girls, Member States should:

(a) As recommended by the Special Rapporteur on violence against women, its causes and consequences in her 2011 report (A/HRC/17/26), develop a holistic approach to violence against women, based on the indivisibility and universality of all human rights, which recognizes the multiple interconnections between different forms of violence against women, its causes and consequences, and addresses multiple and intersecting forms of discrimination;

(b) In the context of affording indigenous people legal jurisdiction that is compatible with their rights to self-determination, develop mechanisms that allow

indigenous women and girls to pursue other means of recourse against violence if they are unable to obtain support and access to justice within indigenous communities;

(c) Balance respect for the right to self-determination of indigenous communities with their responsibility to protect indigenous women and girls in their capacity as national citizens and rights bearers;

(d) Ensure that all forms of violence against women, including female genital mutilation and child marriage, are included as violations within criminal law;

(e) Ensure clarity with regard to the relationship between indigenous, national and local jurisdictions in relation to violence against women; and ensure that the justice process is accessible and sensitive to the needs of indigenous women;

(f) In engagement with indigenous women and girls and building on existing good practice, develop more comprehensive anti-violence and recovery programmes within indigenous communities;

(g) Build the capacity of female indigenous leaders to advocate for the rights of women and girls to freedom from violence within indigenous communities;

(h) Invest in research into the root causes of domestic violence against women in indigenous communities and design preventive and recovery programmes;

(i) Refrain from any forms of violence against women, particularly in situations of conflict, and prosecute all allegations of violence carried out by Government officials, such as border guards, the military and police.

80. With regard to monitoring and accountability, Member States should:

(a) Consider developing national action plans on indigenous women's rights, which are strongly linked with clear monitoring and accountability systems;

(b) Invest in research and data collection systems to collect data disaggregated by gender, ethnicity or race, religion, language and territory or geographical area. Such data collection and research should include information on human rights violations, with particular focus on the situation of women and girls;

(c) Ensure that the targets and indicators agreed to monitor the sustainable development goals include ways to measure and incentivize progress in relation to indigenous communities and women in a meaningful way;

(d) Work with the United Nations to ensure that a more consistent and robust analysis of indigenous women's rights is included in the monitoring of all international human rights mechanisms;

(e) Monitor the full implementation of the recommendations made by the treaty bodies, special procedures mechanisms and universal periodic review.

Recommendations to United Nations organizations and mechanisms

81. While the Special Rapporteur appreciates the attention given to the rights of indigenous peoples within the work of other United Nations mechanisms, more consistent and geographically comprehensive analysis of the fulfilment of human rights among indigenous women and girls is urgently needed. United Nations human rights mechanisms should direct additional attention to the nexus between individual and collective rights and how that impacts indigenous women and girls, as well as how intersecting forms of discrimination and vulnerability impact human rights violations.

82. In the context of this increasing attention to indigenous peoples, the Special Rapporteur recommends that the Committee on the Elimination of Discrimination

against Women develop a general comment on the rights on indigenous women and girls.

83. In addition, as invited to in the outcome document of the 2014 World Conference on Indigenous Peoples, the Commission on the Status of Women should consider the issue of the empowerment of indigenous women at a session.

84. The Human Rights Council should, as it was also invited to do in the outcome document of the 2014 World Conference on Indigenous Peoples, consider examining the causes and consequences of violence against indigenous women and girls, in consultation with the Special Rapporteur and other special procedures mandate holders.

85. United Nations organizations and mechanisms should:

(a) Ensure effective follow-up to all the relevant recommendations made by treaty bodies, special procedures mechanisms and the universal periodic review;

(b) Work with Member States to develop research into underdeveloped areas which particularly impact the rights of indigenous women and girls. Research should be developed on intersecting discrimination and vulnerability and the relationship between individual and collective rights;

(c) Recognize the agency of indigenous communities, women and girls as development actors within the sustainable development goal for development partnerships;

(d) Ensure that the concerns of indigenous women and girls are included within the post-2015 framework;

(e) Work with indigenous women to strengthen analysis of both collective and individual indigenous rights within the monitoring of the Beijing Platform of Action.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz

Addendum

The situation of indigenous peoples in Paraguay*,**

Summary

Paraguay has a constitutional framework in which the rights of indigenous peoples are recognized. However, this normative framework has not been translated into the legislative, administrative or other measures needed to ensure the enjoyment by indigenous peoples of their human rights, in particular their fundamental right to self-determination and their rights to their lands, territories and natural resources. The lack of access to justice and the persistence of racism and discrimination are also causes for concern.

There is a widespread lack of legal protection for indigenous peoples' rights over their lands, territories and resources, which are vital to ensure their survival and uphold their dignity. This situation gives rise to numerous conflicts and human rights violations. The Government of Paraguay should regard this as an emergency situation.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and English only.

** The appendix is circulated in the language of submission only.

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Annex

[*English and Spanish only*]

Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, regarding the situation of indigenous peoples in Paraguay

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I. Introduction

1. The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, visited Paraguay from 21 to 28 November 2014 at the invitation of the Government. The purpose of the Special Rapporteur's visit was to evaluate the human rights situation of indigenous peoples in the country in the light of international human rights standards and, on that basis, to provide the Government with comments and recommendations designed to support the full implementation of those standards.

2. In the capital, Asunción, the Special Rapporteur met with Supreme Court judges, the Ministers of Justice, Labour, Employment and Social Security, Women, and Public Health and Welfare, representatives of the Ministry of Foreign Affairs, Industry and Trade, Education and Culture, and the Interior and representatives of the Secretariat for Social Action, the Secretariat for the Environment and the National Institute for Indigenous Affairs (INDI). The Special Rapporteur also met with members of the Senate Committee on Indigenous Peoples and representatives of the international donor community, non-governmental organizations (NGOs) and the private sector.

3. The Special Rapporteur held a working meeting with representatives of indigenous organizations in the country (see the list given in the appendix) and separate meetings with the Federation for the Self-Determination of Indigenous Peoples (FAPI) and indigenous women.

4. The Special Rapporteur attended various meetings in Asunción and visited the city of Filadelfia (Boquerón Department in the Western Region (the Chaco)) and the Mbyá Guaraní community of Cheiro Ara Poty (Caaguazú Department, Eastern Region).

5. The Special Rapporteur thanks the Government of Paraguay for its close cooperation, which allowed her to do her work in a free and independent manner, and for the copious information provided by the institutions with whose representatives she met. She thanks INDI, in particular, for its contribution to her work. She would also like to express her gratitude to the representatives of indigenous peoples, NGOs and civil society and to the United Nations country team for their help in preparing for and managing her mission. She is especially grateful to the Human Rights Adviser of the Office of the High Commissioner for Human Rights (OHCHR) in Paraguay and her team. The Special Rapporteur is most grateful for the hospitality shown and information provided by the indigenous peoples with whom she dealt.

II. Indigenous peoples of Paraguay

6. According to the results of the Third National Census of Indigenous Peoples, in 2012 there were 115,944 indigenous persons in Paraguay (some 2 per cent of the population) living in 13 departments in both the Eastern Region and the Chaco, as well as the capital, Asunción.[1] The results of this census identify 19 indigenous peoples belonging to 5 linguistic families: Guaraní (Aché, Avá Guaraní, Mbya Guaraní, Paĩ Tavytera, Guaraní Ñandeva, Guaraní Occidental), Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Angaité, Guaná), Mataco Mataguayo (Nivaclé, Maká, Manjui), Zambuco (Ayoreo, Yvytoso, Tomáraho) and Guaicurú (Qom). These people live in 493 communities and 218 villages or neighbourhoods, for a total of 711

[1] This is the total based on the national census of the non-indigenous population and the Third National Census of Indigenous Peoples and Households. *Censo de comunidades de los pueblos indígenas. Resultados finales 2012*, Technical Planning Secretariat for Economic and Social Development, General Directorate for Statistics, Surveys and Censuses, April 2015.

settlements. Some 86.2 per cent of the 493 communities are incorporated and thus have legal capacity.

7. During the Spanish conquest and colonization of what is now Paraguay, beginning in the sixteenth century, the indigenous population was decimated, especially in the Eastern Region. Colonization of the Chaco intensified in the nineteenth century. Following independence in 1811, successive authoritarian regimes adopted policies aimed at confiscating indigenous lands, thus depriving indigenous peoples of their rights to their lands and resources. In 1918, the Government launched a policy to encourage foreign immigration by offering parcels of land. In the 1920s, Mennonite immigrants arrived and, assisted by legislation that gave them special rights and privileges, settled on indigenous lands, hiring their indigenous inhabitants as labourers.

8. During the General Alfredo Stroessner dictatorship (1954-1989), large numbers of indigenous peoples were displaced from their lands and became victims of grave and systematic violations of their rights, including attacks by civilians and the military against the Aché, Ayoreo, Maskoy and Toba Qom, extrajudicial killings and the abduction of indigenous children from their families, as documented by the Truth and Justice Commission in the work it carried out between 2003 and 2008 in an attempt to shed light on the crimes committed under the dictatorship. [2] According to the Commission, some of those same practices continued during the transition to democracy.

9. In the 1970s, indigenous peoples started to organize to defend their rights and interests at the regional and national levels and founded several indigenous organizations and groups. With the advent of democracy, Paraguay adopted a new Constitution in 1992 that recognizes the pre-existence and rights of indigenous peoples; existing legislative, administrative and public policy measures have not been sufficient to translate that recognition into action, however.

III. Legal and institutional framework

10. Paraguay is a signatory to the core international human rights and environmental treaties. At the regional level, it has ratified the American Convention on Human Rights and has recognized the jurisdiction of the Inter-American Court of Human Rights. In 1993, Paraguay ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). [3] At the 2007 United Nations General Assembly, it voted in favour of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples ("the Declaration").

11. Chapter V of the 1992 Constitution of Paraguay, which deals with indigenous rights, was at the time of its writing one of the most progressive legal instruments in existence in terms of the recognition of the rights of indigenous peoples. Article 62 recognizes the pre-existence of the indigenous peoples, defined as "groups from earlier cultures" at the time of the country's founding. Article 63 recognizes and guarantees the right of indigenous peoples to preserve and nurture their ethnic identity, to follow their own political, social, economic, cultural and religious norms and to be bound of their own free will by their customary laws in internal matters. Other constitutional provisions recognize the right to communal land ownership (art. 64) and indigenous participation (art. 65) and establish special measures to protect indigenous

[2] Truth and Justice Commission of Paraguay. Final report, vol. III, *Conclusions and Recommendations*, 2008.

[3] Paraguay had ratified the ILO Indigenous and Tribal Populations Convention, 1957 (No. 107) in 1968.

peoples from depopulation, degradation of their habitat, environmental pollution, economic exploitation and cultural alienation (art. 66). They also include affirmative action measures. The principal legislative instrument relating to the rights of the indigenous peoples of Paraguay is the Indigenous Communities Statute (Act No. 904/81), which provides for the establishment of the government institution responsible for indigenous affairs, the National Institute for Indigenous Affairs (INDI), and defines the administrative procedures for recognition of the legal status and land claims of indigenous communities to be applied by INDI and the Social Welfare Institute (now the National Institute for Rural and Land Development).

12. In addition to that framework law, statutes on other issues include Act No. 43/89, which provides for a special regime for the regularization of title to indigenous settlements, and Act No. 323/107 on indigenous education. Some more general laws also contain references to indigenous peoples (e.g., the Agrarian Code (Act No. 1863/02) and the Code of Criminal Procedure (Act No. 1268/98)).[4]

13. In addition to INDI, which is the lead agency for indigenous issues, other government bodies deal with issues of importance to indigenous peoples, and some have specific departments for that purpose. They include the Directorate-General of Indigenous Education, the Directorate-General of Indigenous Health, the Original Peoples Department of the Secretariat for Social Action and a special unit of the Ministry for Women's Affairs that works to promote participation by indigenous women. Both the Chamber of Deputies and the Senate have established Committees on Indigenous Peoples.

14. The Human Rights Directorate of the Supreme Court also deals with issues relating to access to justice for indigenous peoples and the harmonization of customary and ordinary justice systems. The Public Prosecution Service has its Ethnic Rights Directorate.

15. Paraguay adopted its National Human Rights Plan in 2013. The executive branch has had its Human Rights Network in place since 2009. An inter-institutional mechanism, the Recommendations Monitoring System (SIMORE), has been established to follow up on the action taken pursuant to international recommendations relating to human rights, and the Government is up to date in its fulfilment of its reporting obligations to United Nations treaty bodies. The Inter-Agency Commission on the Enforcement of International Judgements (CICSI)[5] was established in 2009 to monitor and coordinate the efforts of the executive branch to comply with the judgements and recommendations of the inter-American system. Outstanding issues include the adoption of a general anti-discrimination law, the appointment of an ombudsman and implementation by the Office of the Ombudsman of the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

IV. Key concerns

16. As the Special Rapporteur said in the statement that she issued upon the conclusion of her mission, the foremost concerns relating to the rights of the indigenous peoples that she noted during her visit are: the lack of security of their rights to their lands, territories and resources; lack of access to justice and redress; lack of effective mechanisms for consultation and consent; racism and discrimination;

[4] See "Derechos indígenas y derechos humanos en Paraguay", compilation by the Human Rights Directorate of the Supreme Court.

[5] Decree 1595/09.

widespread poverty and extreme poverty; and barriers to their enjoyment of their economic, social, cultural and environmental rights.

A. Lands, territories and natural resources

17. Article 64 of the Paraguayan Constitution recognizes the right of indigenous communities to communal ownership of their lands, which are indivisible and non-transferable, not subject to seizure or income tax and may not be leased or used as security for contractual obligations. That article also stipulates that indigenous peoples may not be displaced without their consent. Nevertheless, in Paraguay there is a general lack of respect and protection for those rights; this has led to violent conflicts that have in turn given rise to human rights abuses. Existing barriers to the enjoyment of those rights have been described in the decisions of the Inter-American Court of Human Rights in the *Yakyé Axa*, *Sawhoyamaxa* and *Xakmók Kasék* cases.[6]

18. According to the results of the 2012 census, 375 indigenous communities had put forward land claims, although 3.9 per cent of those communities lacked legal title, while another 134 communities stated that they are landless; 145 communities reported that they were experiencing land-related problems, such as the wrongful appropriation of land by business enterprises, occupation of land by small-scale farmers, wrongful appropriation of land by public agencies, the existence of overlapping land titles and the rental or loan of land to third parties.

19. Indigenous peoples' access to land (referred to in the law as "settlements of indigenous peoples") is regulated in the Indigenous Communities Statute, which states that the land area to be awarded to indigenous communities shall be determined based on the number of inhabitants and the amount of land necessary to ensure the cultural and economic viability of the community and its future growth, with a minimum of 20 hectares per family in the Eastern Region and 100 hectares per family in the Chaco. The law sets out the procedures for the submission of land claims and the award of title to communal lands.

20. Given the general situation in the country, the law appears to fall short of what is needed to ensure implementation of the constitutional and international standards relating to the rights of indigenous peoples. The legal framework suffers from conceptual shortcomings, as it characterizes land as no more than a productive resource without taking into account traditional land uses and the cultural and spiritual values that indigenous peoples associate with the land. According to information provided to the Special Rapporteur, the procedure for securing land titles is bureaucratic, difficult to follow and slow. The privatization of large amounts of land and the lack of a proper land registry have given rise to the existence of overlapping ownership deeds that serve as a basis for multiple claims to the same parcels. Conflicting claims are often settled in favour of business enterprises, thus depriving indigenous peoples of their lands. According to official sources, the expropriation process that should be followed in the case of indigenous land awards is often unworkable because of high land prices, and this situation often redounds to the benefit of private landowners. As a result, the issuance of land titles is frequently limited to non-contiguous parcels that are then broken up into lots which are often too small to be of practical use.

[6] Inter-American Court of Human Rights, *Yakye Axa indigenous community v. Paraguay*, decision of 17 June 2005, series C, No. 125; *Sawhoyamaxa indigenous community v. Paraguay*, decision of 29 March 2006, series C, No. 146; *Xakmok Kasek indigenous community v. Paraguay*, decision of 24 August 2010, series C, No. 214.

21. It has been difficult for the institutions responsible for that process — INDI and the National Institute for Rural and Land Development (INDERT) — to coordinate their efforts because of differences in their statutes, mandates and procedures. Since INDI is lower down in the governmental hierarchy than INDERT and the Secretariat for the Environment, it is difficult for it to take action to ensure full implementation of the law by these two institutions. It became clear to the Special Rapporteur that, given its current budget and endowment of human and technical resources, INDI will have difficulty safeguarding the rights of indigenous peoples to their lands, territories and natural resources. The Special Rapporteur was provided with information on a draft bill to convert INDI into a ministry for indigenous peoples. Such a change in hierarchy could help to ensure that the new institution would have an adequate, regular and predictable budget and would be vested with the authority it needs in order to meet its responsibilities.

22. The Special Rapporteur heard numerous complaints about indigenous lands being taken over by settlers, farmers or forestry enterprises, large soybean producers or ranchers and about the resulting clashes. According to the information provided to the Special Rapporteur, many of these disputes are resolved in favour of third parties for various reasons, including racism and discrimination against indigenous peoples on the part of provincial political bodies that sometimes are linked to the interests of the groups occupying the land. In some cases, the situation is the result of the justice system's failure to fully apply existing constitutional and international standards, which gives rise to a climate of impunity. The Special Rapporteur is concerned by reports of violations of the land rights of indigenous persons by public institutions. In particular, references have been made to the issuance of environmental permits by the Secretariat for the Environment that do not conform to Paraguayan law or international standards relating to the rights of indigenous peoples.

23. The Special Rapporteur was apprised of specific cases that attest to indigenous peoples' lack of access to and control over their lands, territories and natural resources. One case in point is the Totobiegosode-Ayoreo peoples, who are divided into two groups, one settled in the communities of Chaidi and Arocojnadi (Alto Paraguay Department in the Chaco) and another, voluntarily isolated group (Jonoine-Urasade). Since 1993, the Totobiegosode have been claiming 550,000 hectares that they consider to be part of their traditional territory. Those lands are part of the El Chaco Biosphere Reserve, which was established in 2005 by the United Nations Educational, Scientific and Cultural Organization (UNESCO), but this designation has not spared these lands from massive deforestation. In 2001, in view of the limitations of the existing legal and administrative framework for according recognition of the contiguous tracts of land which they claim, the Tobobiegosode requested that the lands in question be declared the Tangible and Intangible Natural and Cultural Heritage Lands of the Ayoreo and Totobiegosode.[7]

24. The Government has granted title solely to non-contiguous areas and has acknowledged its inability to carry out the necessary expropriations.[8] The lands to which their claims have been granted do not provide the territorial contiguity needed to guarantee the rights and survival of the Totobiegosode. Furthermore, the Special Rapporteur was informed that the Secretariat for the Environment has issued environmental permits for livestock-raising, forestry and oil exploration in the claimed territories without consulting the communities concerned, in violation of Act No. 43/89, which prohibits any change in land use in territories claimed by indigenous

[7] Resolution 1/2001 of the Ministry of Education and Culture, ratified by the National Secretariat for Culture in its resolution 491/2009.

[8] Reply of the Government to a letter from Special Rapporteur James Anaya (A/HRC/15/37/Add.1).

peoples while the adjudication process is under way. Those activities could have severe effects on the families living in isolation.

25. The Special Rapporteur also met with the legal representatives of Yaguareté Porá Ltd., one of the private companies that owns land in the claimed area, according to whom the company does not want to leave and is proposing as a solution the establishment of a permanent private protected area, the Yaguareté Porá Natural Reserve,[9] to serve as a biological corridor and passageway between the lands in question for use by peoples living in isolation. The company, while saying that it wishes to reach a solution through dialogue, has continued to file claims with the courts (including one in which it requests cancellation of the Natural and Cultural Heritage Lands designation). The company is reportedly still operating in the disputed territories on the basis of the environmental permits issued by the Secretariat for the Environment, even though those permits have been repeatedly revoked by the courts.

26. Another source of concern is the situation of the Cheiro Ara Poty community of the Mbyá Guaraní people (Caaguazú Department), who submitted a land claim in 1981 that was approved by the National Assembly in 1989. An order for the expropriation of the lands in question from the Sommerfeld Komitee company was issued. Following a series of claims and appeals before the courts which were won by INDI and that community, Sommerfeld Komitee has still not withdrawn the funds deposited by INDI to pay for the land. As a result, no transfer agreement has been signed and it has not been possible to transfer title to the community.

27. The situation of communities whose lands are in the process of being officially recognized is also a source of concern. For example, the Avá Guaraní community of the Y'apo people submitted a claim for 5,000 hectares, part of its traditional territory, in 1999. Those lands, including Laguna San Antonio, a sacred place for the community, currently belong to the company Laguna Ltd. The community says that the company's private security firm constantly harasses them in an effort to make them leave their current settlement. According to reports brought to the attention of the Special Rapporteur, there was an attempt to forcibly expel the community in May 2014, followed by an attack one month later during which 50 armed civilians invaded the community, wounding, robbing and firing upon the residents. Despite the rapid response of the authorities following that attack, it is worrisome that no measures for protecting this are currently in place.

B. Access to justice

1. The legal system and indigenous rights

28. The Paraguayan Constitution recognizes the right of indigenous peoples to "freely apply their political, social, economic, cultural and religious systems and to be bound of their own free will by their customary laws in matters relating to their own communities" (art. 63). Article 268, which deals with the Public Prosecution Service, establishes that its duties include the pursuance of public legal action in order to, inter alia, defend "the rights of indigenous peoples".

29. These constitutional provisions have been elaborated upon in other laws and public policies. The Code of Criminal Procedure outlines the procedures to be followed for the prosecution of punishable offences related to indigenous peoples. The Ethnic Rights Directorate of the Public Prosecution Service is responsible for ensuring

[9] See Decree No. 11726 of 11 January 2008.

compliance with regulations governing indigenous rights. Offences involving members of indigenous peoples are to be immediately submitted to this Directorate.[10]

30. Paraguay has undertaken to apply the Brasilia Regulations Regarding Access to Justice for Vulnerable People, which include indigenous peoples within its definition of vulnerable groups.[11] The measures adopted to this end include the provision of indigenous interpreters during legal proceedings, although, as acknowledged by the Supreme Court itself, progress in this connection has been slow to materialize. The Human Rights Directorate of the Supreme Court has launched various activities aimed at harmonizing customary law and ordinary law and is providing training for judges and legal officials about the rights of indigenous peoples and awareness-raising opportunities in this regard. Existing initiatives relating to indigenous peoples need to be strengthened and consolidated in order to bring about the necessary changes in the legal system.

31. Notwithstanding these important initiatives, access to justice continues to be severely limited for the country's indigenous populations, and substantive structural and procedural problems remain. The Special Rapporteur has learned of various contradictory decisions that have been issued by different courts. This situation not only undermines legal certainty and clarity for all parties involved, but also hinders the effective exercise of rights, particularly indigenous land rights. Information has also been received that reveals that racist and discriminatory attitudes remain deeply embedded, especially in courts of first instance and provincial courts, and that there is a lack of familiarity with international human rights standards and the judgements of the Inter-American Court of Human Rights. Some public prosecutors disregard the observations of the Ethnic Rights Directorate, and there are not enough public defenders to ensure access to justice for indigenous peoples. The Special Rapporteur has noted with concern that indigenous peoples' own legal systems are rarely promoted or validated as suitable mechanisms for the administration of justice, nor are they coordinated with State legal systems as provided for by international instruments. The Special Rapporteur was informed that, on 22 July 2015, as part of the Government's efforts to promote and comply with the provisions of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) regarding customary law, the Human Rights Directorate of the Supreme Court convened the first meeting for legal officials concerning the process to be used for validating curricular proposals designed to uphold indigenous rights. Participants pledged to develop proposals concerning the curricula to be used in training civil servants and judges in this area. The Special Rapporteur supports this type of training and urges the authorities to ensure that it continues.

2. Access to redress

32. The Special Rapporteur received numerous reports about the lack of redress in cases where the human rights of indigenous peoples have been violated. She has learned, for example, about the situation of the Mbyá Guaraní communities in the Caazapá, Itapúa and Misiones departments, who were moved from their lands in the 1970s — without adequate compensation — to make way for the building of the Yacyretá hydroelectric dam. By way of redress, the Mbyá Guaraní organizations have called for the transfer of title to some 50,000 hectares of what remains of the forests that were formerly part of their ancestral lands, which they call Tekoha Guasú. In 1992, the Secretariat for the Environment made those lands part of the San Rafael National Park without prior consultation with the indigenous communities in the area.

[10] Resolution No. 3918/09.

[11] Approved in 2008 at the Fourteenth Meeting of the Ibero-American Judicial Summit.

33. In 2008, INDI recognized Tekoha Guasú as traditional Mbyá Guaraní land.[12] It later acknowledged the extent of the damage caused to this community as a result of the construction of the Yacyretá dam and confirmed the need to provide recompense for the "historic debt" owed to these peoples.[13] In February 2014, INDI obtained 495 hectares in the area in order to begin the process of consolidating Tekoha Guasú as compensation for the lands and islands that had been lost. For full reparation to be made for the harm done, it is important to conclude the process of allocating the titles to the reclaimed lands and of dealing with the requests put forward by indigenous organizations.

34. One important issue that is linked with redress in cases where the human rights of indigenous peoples have been violated is the implementation of the judgements handed down by the Inter-American Court of Human Rights in the *Yakyé Axa*, *Sawhoyamaxa* and *Xakmók Kasék* cases. The Special Rapporteur has been made aware of the measures adopted to comply with those judgements, along with the limitations thereof.

35. The Court ruled that the State has an obligation to adopt the necessary legislative, administrative and other measures to establish an efficient mechanism that will enable indigenous peoples to reclaim their ancestral lands and thus exercise their property rights. This mechanism must also take into account these peoples' customary laws, values and customs. This obligation has not yet been discharged, and its fulfilment is essential if many of the indigenous land rights issues described in this report are to be resolved.

36. In respect of the provisions referring specifically to the petitioning communities in the above-mentioned judgements, the Government has reportedly taken some decisive steps towards returning these communities' ancestral lands to them by providing the necessary funding and acquiring or expropriating lands of the Yakyé Axa and Sawhoyamaxa communities. However, the land titles have, for various reasons, still not been transferred, and these communities have therefore not been able to resettle these lands in a secure fashion. In the case of the Xakmók Kasék community, part of the lands due to be returned have still not been acquired. In all three cases, the compensation awarded by the Court — including, in this case, overdue interest payments — has been paid to the communities. With regard to the obligation to establish a community development programme and fund, in the first two cases the money was illegally withdrawn and the cases are awaiting trial. In the third case, the Government has not responded to requests from the community, even though the deadline was in 2011.

37. In all three cases, the Court ruled that certain social services should be provided to the communities. Although some services have been made available, there have been shortfalls in this respect, and supplies of food and water have been insufficient and erratic. The same kinds of problems have been reported in the case of communications services for the Xakmók Kasék community. Public dissemination of the judgements has been no more than partial, as is also the case with the identification programme in Sawhoyamaxa and Xakmók Kasék.

38. In view of the foregoing, it is clear that the measures taken pursuant to the judgements are — although substantive — not sufficient for them to be considered to have been entirely fulfilled, whether in the case of specific measures in respect of the complainants or the general measures outlined by the Court.

[12] Resolution 1178/08.
[13] Resolution 23/2018.

C. Participation, consultation and consent

39. There is a widespread problem in terms of non-compliance with the State's obligation to engage in consultation before it adopts legislative, political and/or administrative measures that directly affect the indigenous peoples and their lands, territories and natural resources.

40. The majority of institutional projects and programmes for indigenous peoples about which the Special Rapporteur has received information, including those conducted by the Secretariat for Social Action, have not included a consultation process. In respect of the investment projects affecting lands of indigenous peoples, the Special Rapporteur has received reports that the communities that could potentially be affected by oil extraction projects and the construction of an oil pipeline and aqueduct in the Chaco region have not been consulted about these projects and, in fact, have not even received any information about them. Reports also indicate that environmental permits for logging and other activities are being granted without prior consultation or consent. This also seems to be the case with the establishment of protected areas and the introduction of other conservation initiatives, such as the creation of the San Rafael National Park reserve, which encompasses 10 indigenous communities and 12 traditional or religious sites.

41. The Special Rapporteur has been informed of a proposed law on consultation and free, prior and informed consent which has been approved by various indigenous organizations and submitted to the Government for its consideration.[14] Apparently, various draft bills have been drawn up by different stakeholders. Without commenting on the content of the various proposals, the Special Rapporteur wishes to emphasize that any measure that is introduced in an effort to ensure that the State meets its obligations concerning consultation with indigenous peoples must be in line with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples and should be developed in conjunction with the indigenous peoples of Paraguay.

42. The Special Rapporteur noted a disturbing lack of participation on the part of indigenous peoples in decision-making in almost all areas of public life. In terms of their participation in the country's political affairs, documented practices used during elections, such as "*acarreamiento*" (mass transportation) and "*acorralamiento*" (roundups and detentions), constitute serious violations of their political and civil rights.[15]

D. Racism and discrimination

43. The Special Rapporteur believes that racism and discrimination are at the heart of many of the problems faced by indigenous peoples in Paraguay. The indigenous populations have historically suffered, and continue to suffer, from multiple, intersectional forms of discrimination that interfere with their enjoyment of all their human rights. Although discrimination is prohibited under the Constitution, the State

[14] Federation for the Self-determination of the Indigenous Peoples and the United Nations Development Programme, *Propuesta de protocolo para un Proceso de Consulta y Consentimiento con los Pueblos Indígenas del Paraguay* (Proposed protocol for a process of consultation and consent with the indigenous peoples of Paraguay), 2013.

[15] European Union Election observation mission. Final report — General elections (2013); Organization of American States, *Informe de la Misión de Observación Electoral de la Organización de Estados Americanos sobre las Elecciones Generales celebradas en la República del Paraguay el 21 de abril de 2013* (OEA/Ser.D/XX-SG/DCOE/II.85 (2014)), p. 43.

has not taken the necessary measures to put this prohibition into practice, and a general anti-discrimination law has yet to be passed. The Truth and Justice Commission has made some important remarks and recommendations that have not yet been acted upon.

44. Socioeconomic marginalization is due, in part, to racism and discrimination, which are also reflected in the measures intended to combat its effects. The Special Rapporteur found that a paternalistic approach was being taken in many of the programmes developed by government bodies, including those being conducted by INDI, with indigenous peoples and individuals being viewed as defenceless recipients or wards of the State rather than as the holders of rights that should be respected, protected and applied.

45. The patterns of systematic discrimination that persist in the Mennonite settlements, where a State presence is notably absent, are of concern and are associated with multiple violations of the human rights of the indigenous peoples living there.[16] During the Special Rapporteur's visit to the Ujeslavos community, she was told about discriminatory practices dealing with access to employment and health-care services that deprive indigenous employees of sufficient social protection. She also learned how the use of temporary employment arrangements effectively limit workers' social security benefits and their health-care coverage under the Ayuda Mutua Hospitalaria insurance programme.

46. Some recent articles and statements that have appeared in the press also reflect a deep-rooted racist attitude towards indigenous people. This attitude has been fuelled by the plight of displaced indigenous peoples in the cities, where they find themselves in difficult straits. The Special Rapporteur has also been apprised of instances of discrimination in working conditions and access to employment.

47. Efforts to combat discrimination are hampered by a lack of disaggregated data on the situation of indigenous peoples. Problems still remain in terms of providing national identity documentation to indigenous persons, although the Ministry of the Interior does state that it is making progress in this area.

E. Economic, social and cultural rights

1. Socioeconomic situation

48. The socioeconomic problems of the indigenous peoples of Paraguay cannot be separated from the socioeconomic circumstances of the country as a whole. As pointed out by the Special Rapporteur on extreme poverty and human rights, there are a series of structural factors in Paraguay, including corruption, vast inequality, a regressive tax structure, the concentration of landownership and environmental degradation, which, combined with institutional weaknesses, hinder progress in alleviating poverty.[17] The country's development model, which promotes rapid economic growth through activities such as mono-cropping — particularly in the case of the massive expansion of soybean cultivation — and livestock, has resulted in the highest rate of deforestation in the world, exacerbating existing environmental problems caused by transgenic crops and the extensive use of chemical fertilizers and pesticides.

49. Although overall poverty in Paraguay[18] appears to have declined, available data indicate that the rates of poverty and extreme poverty among indigenous peoples are

[16] See A/HRC/19/60/Add.1, para. 49.

[17] A/HRC/20/25/Add.2.

[18] 2014 Continuing Household Survey. Main results for poverty and income distribution. Directorate-General for Statistics, Surveys and Censuses (DGEEC).

75 per cent and 60 per cent, respectively, thus far exceeding the national average. Among indigenous children under the age of 5, the rate of extreme poverty is 63 per cent (compared to the national average of 26 per cent), and the chronic malnutrition rate is 41.7 per cent (compared to 17.5 per cent).[19] Representatives of indigenous groups mentioned the lack of food security and of access to drinking water (especially in the Chaco region) as serious and recurrent problems.

50. The poverty and extreme poverty afflicting most of the indigenous communities of Paraguay are closely tied to their lack of access to and control over their lands, territories and natural resources or to their outright loss of these assets. As a result, they have witnessed the disappearance of their livelihoods and ways of life without being granted, in exchange, access to the country's mainstream economic system. Thus, indigenous peoples lack viable economic options even when they have title to their lands.

51. Given their special relationship with and reliance on their lands, territories and natural resources, indigenous peoples are among those segments of the population that are most affected by unsustainable forms of production and environmental destruction. In addition to information concerning the loss of forests and other ecosystems and the decline of traditional knowledge and its associated economic systems, the Special Rapporteur received information on the impact of the use of pesticides, especially on large soybean plantations, which is interfering with indigenous peoples' enjoyment of their right to health and other rights.

52. Noteworthy among the many problems observed by the Special Rapporteur during her visit is the prevalence of discriminatory views about the ability of indigenous peoples to develop their own economic alternatives on the basis of both traditional and modern-day activities, such as those related to conservation, environmental services or climate change mitigation and adaptation (in particular the implementation of the REDD+ Programme). In this connection, the Special Rapporteur was informed about a number of valuable initiatives being undertaken by indigenous organizations with the aim of drafting public policy proposals. These initiatives have not as yet been duly taken into account.[20]

53. Another serious consequence of the alarming socioeconomic situation of indigenous peoples is an increase in the practice of renting or leasing community lands to third parties. This practice, which is found among 36.9 per cent of the indigenous communities, is unlawful but, above all, is evidence of these communities' high level of socioeconomic vulnerability.

54. Poverty and the lack of security of land tenure have, in recent years, propelled increasing numbers of indigenous migrants towards urban areas. The Special Rapporteur was able to visit the Ayoreo settlement at the Pilgrim House in Filadelfia, where she heard repeated complaints about the worrisome situation of indigenous persons who have been displaced to urban centres. She was told that, in Asunción, fences have been erected in public parks to prevent indigenous migrants from setting up camps in them. She heard reports of the forced relocation, without the necessary safeguards, of indigenous people from cities to other locations. She received reports

[19] Country report "Diagnostico y propuestas para el desarrollo de una politica publica de seguridad alimentaria y nutricional de los pueblos indigenas en Paraguay" Ministerio de Agricultura y Ganaderia (Diagnosis and proposals for the development of a public policy on food and nutritional security for the indigenous peoples of Paraguay) Ministry of Agriculture and Livestock, National Institute of Indigenous Affairs (INDI), Food and Agriculture Organization (FAO) (2014).

[20] Public policy proposals concerning indigenous peoples, United Nations Development Programme (UNDP), Federacion por la Autodeterminación de los Pueblos Indigenas (FAPI), Pro Comunidades Indigenas (PCI). Submitted to the Government in 2009.

concerning a lack of personal security, an increase in the number of indigenous street children and human trafficking, especially in border areas.

55. In order to overcome this distressing situation, urgent and effective public policies must be put into place. However, the Government's 2014-2030 National Development Plan does not refer specifically to indigenous peoples or to their rights, nor is there any indication that the Plan was formulated in conjunction with indigenous peoples on the basis of a participatory or consultative process.

56. The Special Rapporteur received extensive information about the various social programmes of the Secretariat for Social Action, whose beneficiaries include indigenous persons. The Tekoporã Programme provides cash transfers to families living in extreme poverty who meet certain conditions. In 2014, the programme was expanded to include the indigenous communities of the Chaco, providing coverage for up to 80 per cent of these communities, or 10,000 persons, of whom 52 per cent are women. An assistance programme for fishers' associations has benefited 529 men and 572 women from 12 indigenous communities. Five individual projects submitted by indigenous communities have been included in the Second Paraguayan Social Investment Programme (PROPAIS II), while an estimated outlay of US$ 250,000 under the Social Development Plan has benefited several indigenous communities in the Chaco region. There are plans to extend other programmes, such as the MERCOSUR Structural Convergence Fund (FOCEM) Yporã Project, to include indigenous communities. The Original Peoples Department is working with the Guaná community, which is at risk of extinction, and with indigenous communities in the "social regions" covered by the Secretariat for Social Action that are in the process of regularizing their titles to their lands.

57. According to the Secretariat for Social Action, the evaluation of the Tekoporã Programme's impact on indigenous peoples has highlighted the need to make certain adjustments in order to give full effect to indigenous peoples' rights by incorporating a community dimension into the transfers and adapting conditions to the beneficiaries' needs. A first step towards reorienting the programmes and ensuring their effectiveness for indigenous peoples was the development of a consultation protocol, which is currently being considered for approval by INDI.[21] There are also plans to provide staff members of the Secretariat for Social Action with training in implementing the protocol and working with indigenous communities.

58. Compliance with the protocol may serve to correct some of the problems encountered in current programmes. However, certain structural problems must be resolved in order to ensure that such programmes have a real impact. There is a need for predictable and sufficient budgets (social spending in Paraguay is much lower than the regional average), and a human rights approach needs to be mainstreamed in all public policies concerning indigenous peoples. Inter-agency coordination also needs to be improved. Public policies will be much more effective if they are designed, monitored, implemented and evaluated with the full and effective participation of indigenous peoples.

59. In order to design public policies that focus on indigenous peoples, disaggregated data and indicators, including appropriate indicators for indigenous peoples themselves, are essential. The participatory and differentiated approach used by INDI in connection with the 2012 census may be considered a best practice for the collection of disaggregated data that are relevant for the formulation, in conjunction with indigenous peoples, of public policies that take into account their own priorities and visions of development.

[21] SAS Protocol for assistance to the indigenous communities

2. Education

60. Paraguay is a multicultural and multilingual country with two official languages: Spanish and Guaraní. The Constitution also recognizes indigenous languages as part of the nation's cultural heritage.

61. Indigenous peoples' contribution to the cultural wealth of the nation notwithstanding, the indigenous population continues to encounter enormous barriers to the enjoyment of the right to education. According to data analysed by the United Nations Children's Fund (UNICEF),[22] the illiteracy rate among the indigenous population of Paraguay is 40 per cent, compared with 5.1 per cent for the non-indigenous population, and the average length of completed studies for persons over the age of 15 is three years for indigenous persons and eight years for non-indigenous persons. Enrolment in primary education has been increasing in stages, but there are still large discrepancies between the gross school enrolment rates of the indigenous and non-indigenous populations. According to the 2012 census results, 70 per cent of indigenous communities, villages or neighbourhoods have a local school, while 71.9 per cent report a lack of classrooms and problems relating to school infrastructure. In 27 per cent of the communities, there are no teachers, and only 45 communities have a secondary school.

62. Indigenous education in Paraguay is governed by Act No. 3231/07, which provides for the establishment of the Directorate-General of Indigenous Education. This law stipulates that the State shall guarantee "the right of indigenous peoples to apply their cultural norms and forms of education" and that indigenous education shall serve to "strengthen their culture and facilitate their active participation in society". It also provides for the establishment of the National Indigenous Education Council, which includes representatives of local indigenous education councils that are made up of members of indigenous assemblies and organizations in various parts of the country.

63. The stated objective of the Directorate-General of Indigenous Education is to strengthen indigenous education and to promote interculturalism by implementing the 2013-2018 National Plurilingual Education Plan for the Indigenous Peoples of Paraguay. In preschool and primary educational institutions in indigenous communities, efforts have been made to promote training for indigenous teachers and teaching in the relevant mother tongue, as well as to support the development, in conjunction with the communities concerned, of culturally appropriate educational materials. In order to link education to other aspects of indigenous life, the Directorate-General is carrying out various initiatives, one of which focuses on the incorporation of traditional foods into school meals. It also envisages improving access to higher and university education, since, despite the fact that such education is free for indigenous students, the number of those who can actually take advantage of it remains very low, as scholarships do not cover travel or accommodation and schools are usually located in urban areas that are far away from these communities. The Directorate-General has acknowledged that its budget is insufficient and unpredictable, which hinders the conversion of such programmes into permanent policy instruments for addressing the problems confronted by the indigenous peoples in terms of the full realization of their right to higher education.

64. In her meetings with indigenous representatives and civil society organizations, the Special Rapporteur listened to complaints about impediments to progress towards these objectives, the lack of participation by indigenous persons in the preparation of legislation and programmes for its implementation, and the persistence of the two fold

[22] UNICEF, Ministry of Education and Culture, Instituto de Desarrollo, *Escuelas de comunidades indígenas en Paraguay. Análisis de datos 2006-2011*, Asunción, 2013, p. 22.

problem of a lack of support for the development of indigenous peoples' own educational systems and a lack of support for efforts to open up their access to national forms of education.

3. Health

65. The Special Rapporteur received worrisome reports about indigenous peoples' enjoyment of their right to health. According to the 2012 census results, 455 of the country's 711 indigenous communities do not have health facilities of any kind, and 253 have no "health promoter". Although 573 communities do receive some services from a family health unit, the exact nature of those services is not known, and the frequency of care is, in many cases, insufficient.

66. In her meeting with indigenous women, the Special Rapporteur was informed of many health-related problems, including the greater incidence of certain diseases, such as colon and uterine cancer, which they attributed to the effects of the aerial spraying of the soybean crops surrounding indigenous communities, the use of genetically modified seeds and plants, and the erosion of their traditional diet. They also said that some medical treatments were culturally inappropriate and that there was a lack of access to health-care infrastructure, including hospitals, because these facilities are located far away from indigenous communities. Transport problems are such that some patients die along the way, before they can reach a health-care centre. Health facilities in indigenous communities lack sufficient supplies of medicines and basic equipment, and health promoters receive no pay. As acknowledged by government sources, the demand for doctors in some of the remote areas where indigenous communities are located has not been met.

67. Indigenous persons appear to not have enough trust in health-care services to seek them out, especially when it comes to diseases such as HIV/AIDS. This disease appears to be spreading rapidly among indigenous communities, a phenomenon that appears to be linked to a lack of special measures and to the prevalence of prostitution and sexual exploitation, especially in border areas, although disaggregated data on these factors could not be obtained. The Special Rapporteur received many reports of discrimination against persons of indigenous origin in the national health-care system and in other private health-care assistance programmes, especially in the Chaco region.

68. Following her visit, the Special Rapporteur was informed that a new law on indigenous peoples' health that reflects a proposal formulated by indigenous organizations had gone through its first reading. She hopes that this law will be formally adopted and that all the necessary resources for its full implementation will be allocated.

F. Indigenous women

69. The Special Rapporteur held a meeting with indigenous women to hear their specific concerns. The participants referred to the indigenous communities' lack of control over their lands, territories and resources and to their fears in the face of the ongoing threat of invasions of their lands by ranchers or cattle-breeders, which prevents them from practising their traditional way of life. They denounced certain indigenous leaders' practice of renting out community lands for very little money, which is an illegal practice that runs contrary to the wishes of the communities, especially their women members. They described the problems that they encounter in seeking to exercise their right to health, as mentioned earlier, and the various types of discrimination that they face from both non-indigenous persons and indigenous men, in the civil service and in police stations. This situation impairs their ability to lodge

complaints when they are the victims of criminal offences or witnesses of such offences, including drug trafficking and trafficking in persons.

70. The Special Rapporteur was informed of various initiatives taken by indigenous women's organizations, such as the Articulación de Mujeres Indígenas del Paraguay (Network of Indigenous Women of Paraguay), which adopted the Asunción Declaration in 2014 in order to set forth their problems and demands.[23]

71. Owing to a lack of disaggregated data, it is difficult to assess the situation of indigenous women in the country. There are no disaggregated data in the first country report on violence against women, which makes it difficult for them to ensure that their specific needs are reflected in the preliminary bill on this subject being prepared by the Ministry. The lack of such data also hinders the work of the Inter-Agency Board on Human Trafficking and other initiatives that could play a very useful role in addressing some of the issues that they raised.

72. Paraguay has recently established the Ministry for Women's Affairs. The Ministry has a special unit whose work focuses on facilitating the direct participation of indigenous women,[24] and this unit is drafting a protocol for working with women from the Ayoreo Totobiegosode community of Chaidi. The Ministry provided general information to the Special Rapporteur on a project to promote the breeding of goats for meat and milk as a means of diversifying the production of high-protein foods for indigenous families in the Chaidi community, raising household incomes and consolidating the food security of the community. The Special Rapporteur hopes that this institutional platform and the above-mentioned project will be given the necessary support and resources so that new and ongoing initiatives will be able to address the specific problems faced by indigenous women in Paraguay.

G. Indigenous peoples in voluntary isolation or initial contact

73. The Special Rapporteur received information about the presence of groups living in voluntary isolation in the Chaco and the Eastern Region who belong to the Ayoreo and Mbyá Guarani peoples, as well as about the Ayoreo Totobiegosode groups, who can be considered as being in a situation of initial contact. She was also informed about the serious threats posed to groups in isolation by the relentless spread of deforestation and the privatization of the territories where they live. She heard various reports about situations in which imminent contact could occur, with the concomitant risk to the survival of these groups, especially in the territory of the Ayoreo Totobiegosode. No government mechanisms or protocols have been devised to forestall these risks.

74. Given this state of affairs, State institutions must take steps to protect and ensure the survival of these groups and to respect their decision to remain in isolation. Particular attention should be devoted to the Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon Basin, El Gran Chaco and the Eastern Region of Paraguay, which were issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in May 2012.

[23] Declaration of the first national meeting of indigenous women in Paraguay, "Defensoras de la identidad y la vida" (Defenders of identity and way of life), Asunción, 30 July 2014 to 1 August 2014.

[24] "Kuña Guarani Aty Sistematizacion del Primer Encuentro", Kuña Guarani Aty Commission, National Anti-Poverty Directorate (DIPLANP), Asunción, 2013. "Kuña Guarani Aty Sistematización del Segundo Encuentro", Ministry for Women's Affairs, Coordinación Nacional de Pastoral Indígena (CONAPI), Asunción, 2015.

V. Conclusions and recommendations

A. Conclusions

75. **Paraguay has a constitutional framework in which the rights of indigenous peoples are recognized. However, this normative framework has not been translated into the legislative, administrative or other measures needed to ensure the enjoyment by indigenous peoples of their human rights, in particular their fundamental right to self-determination and their rights over their lands, territories and natural resources. The lack of access to justice and the persistence of racism and discrimination are also causes for concern.**

76. **The Special Rapporteur has observed a widespread lack of legal protection for indigenous peoples' rights over their lands, territories and resources, which are vital to ensure their survival and uphold their dignity. This situation gives rise to numerous conflicts and subsequent human rights violations. The Government of Paraguay should regard this as an emergency situation.**

77. **The indigenous peoples of Paraguay are also subject to widespread poverty and extreme poverty. In order to alleviate the situation, what is needed is coordinated and systematic action on the part of all institutions, donors and other stakeholders to develop public policies, in conjunction with the indigenous peoples concerned, to address its root causes. Short-term projects and programmes which are primarily funded by foreign aid have proved to fall short of what is needed to resolve the serious problems that exist. Institutional weaknesses and a lack of inter-agency coordination also diminish the State's capacity to respond to this critical situation.**

B. General recommendations

78. **In the light of the above conclusions, the Special Rapporteur would like to present the Government of Paraguay with the following recommendations, which should be implemented in collaboration with the indigenous peoples of the country.**

Lands, territories and natural resources

79. **The Special Rapporteur recommends:**

(a) The establishment and adoption, with the full participation of the indigenous peoples concerned, of a new legal framework for indigenous peoples' rights over their lands, territories and natural resources, in accordance with the constitutional framework and relevant international standards. The new legislation should establish an accessible, rapid and effective procedure for the adjudication of land titles and should provide for a review of existing laws on expropriation;

(b) The use of all financial, judicial and other measures needed to resolve existing conflicts concerning the ownership of indigenous lands as quickly as possible, in keeping with the parameters set by the rulings of the Inter-American Court of Human Rights in the *Yakye Axa*, *Sawhoyamaxa* and *Xakmok Kasek* cases;

(c) The effective enforcement of legislation relating to the protection of lands claimed by indigenous communities and the development and implementation of suitable instruments and mechanisms, including early warning

systems, arrangements for expedited legal action and on-site monitoring systems, in order to ensure the security of land tenure of indigenous peoples and to prevent third parties from intruding into their lands, while imposing appropriate penalties for such intrusions when they occur and compensating the affected communities for any damage that they may have sustained;

(d) The provision of training to the police force and other law enforcement agencies of the State regarding the rules of international law concerning the forced eviction of indigenous peoples so as to ensure that their actions are fully consistent with international human rights standards and international instruments relating to the rights of indigenous peoples;

(e) The full implementation, as a matter of urgency, of the decisions handed down by the Inter-American Court of Human Rights in the *Yakyé Axa*, *Sawhoyamaxa* and *Xakmók Kasék* cases, including measures relating to appropriate procedures for the adjudication of land titles.

Access to justice

80. The Special Rapporteur recommends:

(a) The establishment of a specialized unit of the Public Prosecution Service within the criminal justice system to deal with offences involving the collective or individual rights of indigenous peoples. The Attorney General's Office should grant this unit the powers, resources and means that it needs to conduct its work in the nation's courts in a prompt and efficient manner. This unit should, in addition, submit such applications and petitions to the nation's criminal courts as may be necessary to help to ensure that the courts' decisions are in conformity with international human rights standards concerning the rights of indigenous peoples;

(b) The establishment of prosecution services and courts specializing in indigenous law that are empowered to assert jurisdiction over civil cases relating to indigenous peoples, communities, families and persons or, alternatively, the adoption of legislative reforms that establish special procedures in each jurisdiction in order to guarantee full respect for indigenous peoples' rights as recognized in the Constitution and in international human rights law. It is also recommended that steps be taken to ensure that these justice officials possess adequate experience in the area of indigenous peoples' rights;

(c) The redoubling of efforts to provide training to judges and other justice officials regarding indigenous peoples' rights and legal systems and to harmonize the national and indigenous legal systems;

(d) The adoption of the necessary measures to provide prompt and full reparation for all the violations of indigenous peoples' human rights that have been documented by the Truth and Justice Commission, in accordance with international human rights standards and the rights of indigenous peoples, and of the measures and action plans that are needed to comply with the Commission's recommendations.

Racism and discrimination

81. The Special Rapporteur recommends:

(a) The immediate adoption of a general law prohibiting all forms of discrimination, including discrimination against indigenous peoples;

(b) The adoption of special measures to counter the discrimination faced by indigenous peoples in all areas, including access to basic social services, health, education, participation in public life and documentation.

Consultation and consent

82. **The Special Rapporteur recommends that the Government fulfil its obligation to hold consultations with indigenous peoples, including through the adoption and implementation of legislative instruments. The Special Rapporteur wishes to stress that the formulation of any procedure or instrument to facilitate or regulate the right to consultation and to free, prior and informed consent should be carried out with the full and effective participation of the indigenous peoples of Paraguay.**

Socioeconomic situation

83. **The Special Rapporteur recommends:**

(a) The reinforcement of the National Institute for Indigenous Affairs (INDI), which should be allocated a larger, regular and predictable budget and granted the power to coordinate all public policies relating to indigenous peoples, including by means of its conversion into a ministry with full powers;

(b) The establishment of an in-depth dialogue with indigenous organizations, advocacy organizations and the donor community, including United Nations entities, concerning the socioeconomic status of the indigenous peoples of Paraguay in order to identify the underlying causes of the current worrisome situation and to design effective public policies for resolving it;

(c) The provision of support to indigenous peoples, including financial and technical support when they so request, by the Government of Paraguay, entities of the United Nations and the donor community with a view to enabling indigenous peoples to formulate and implement their own freely determined development proposals;

(d) The urgent implementation of the recommendations issued by various United Nations entities, special procedures mechanisms and treaty bodies that deal with indigenous peoples' labour rights, access to employment and working conditions;

(e) The design and effective implementation of a REDD+ programme and the application of the associated social and environmental safeguards, which include respect for indigenous peoples' rights and knowledge, guarantees for their full and effective participation and the prevention of deforestation, among other measures;

(f) Full recognition of and respect for the rights of indigenous peoples as they apply to the activities involved in the conservation and sustainable use of biodiversity, especially in terms of the establishment and management of protected areas that affect their lands, territories or natural resources. The indigenous peoples concerned should be consulted with a view to obtaining their consent prior to the establishment of such areas and should participate in their management;

(g) Thorough research into how the spraying of pesticides and other agrochemical products impairs the health and other human rights of members of indigenous communities. The Government should adopt and implement legislation to regulate the use of such products and duly compensate those who have been harmed by them.

Education

84. **The Special Rapporteur recommends:**

(a) The formulation, adoption and implementation of a national public policy on indigenous education that gives effect to indigenous peoples' right to education, which includes their right to establish their own educational systems in their own languages. The policy should also provide for special measures to ensure access to the general education system, especially at the secondary and tertiary levels;

(b) The implementation of a review of the curricula used in the general education system in order to ensure that they promote interculturalism and contribute to a better understanding of and due respect for indigenous peoples and their history, heritage, culture and rights.

Health

85. **The Special Rapporteur recommends the adoption, without delay, of a new law on health care for indigenous peoples and of all the administrative and budgetary measures necessary for its implementation so that indigenous peoples may fully enjoy their right to health, which includes the right to the protection of their traditional health practices, the use of a suitable intercultural approach in health-care facilities and the elimination of discriminatory practices in health-care systems.**

Indigenous women

86. **The Special Rapporteur recommends that the Government work with indigenous women to compile disaggregated data on all aspects of their situation, including violence against women, women's socioeconomic status, general and sexual and reproductive health, trafficking in persons and other issues, and that it adopt the necessary targeted policies for indigenous women.**

Peoples in voluntary isolation

87. **The Special Rapporteur recommends the adoption of the necessary measures for ensuring the survival of indigenous peoples in voluntary isolation and eliminating the risks of unwanted contact that appear to exist at present, taking into account the Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon Basin, El Gran Chaco and the Eastern Region of Paraguay. Due attention should be paid to the situation of groups in initial contact.**

C. Specific recommendations

88. **The Special Rapporteur recommends that the Government of Paraguay accelerate the process of according recognition to the ancestral lands claimed by the Ayoreo Totobiegosode people and that all private property owners in the area cooperate with the Government and, in good faith, engage in dialogue with the Ayoreo Totobiegosode and representatives of their institutions in order to settle this claim justly and definitively.**

89. **Until such time as an equitable procedure for land title adjudication has been conducted, the State should take whatever measures are necessary to prevent further violations of the rights of the Ayoreo Totobiegosode in relation to their lands, territories and resources, including by means of the suspension of any**

relevant permits and of any works, projects or activities on the claimed lands, including privately owned property.

90. **The Special Rapporteur recommends that the Government take the necessary measures to ensure the favourable settlement, as a matter of urgency, of the land claim submitted to the National Institute for Indigenous Peoples (INDI) in 1999 by the Avá Guaraní community of Y'apo. The authorities should guarantee the personal safety of the community's members while their claim is being settled, investigate and punish those responsible for the attacks perpetrated against the community and ensure that the community receives just reparation for the damages it has sustained.**

91. **The Special Rapporteur also recommends that the Government take all necessary measures to finally give effect to the conveyance of the lands awarded to the Mbyá Guaraní community of Cheiro Ara Poty.**

92. **The Special Rapporteur recommends that a dialogue be established among all stakeholders, including the indigenous peoples concerned, in the cases relating to indigenous communities that have been affected by the construction of the Yacyretá dam with a view to developing a plan for the provision of reparation and compensation and a strategy for its implementation. The Special Rapporteur recalls the right of indigenous peoples to obtain reparation by means of the recovery of the lands or territories that they had previously owned or utilized and had lost without their consent and, if this is not possible, by means of the award of lands, territories and resources that are of a quality, size and legal status similar to those that they had previously owned or occupied.**

Appendix

[*Spanish only*]

Organizaciones indígenas participantes en la reunión de trabajo con la Relatora Especial (Asunción, 25 de noviembre de 2014)

Articulación de Mujeres Indígenas del Paraguay (MIPY)

Asociación Angaite de desarrollo comunitario (ASADEC)

Asociación Centro Cultural y Social del Pueblo Nivaklè (Zona PILCOMAYO)

Asociación de Comunidad Indígenas Lumnanas (MANJUI)

Federation of Ijaw Communities

Unión de Comunidades Indígenas de Centla, A.

Asociación de Comunidades Indígenas de Itapúa (ACIDI)

Asociación de Comunidades Indígenas del Pueblo Pai Tavyterá Pai Reta Joajú

Asociación de Comunidades Indígenas Guaraní de Alto Paraná (ACIGAP)

Asociación de Comunidades Mbya Mba-e Pu Pora

Asociación de Comunidades Mbya Opy Porá Mbaraetera

Asociación de Educadores Aborígenes Bajo Chaco (ASEAPI)

Asociación de Maestros Indígenas de Caaguazú (AMIC)

Asociación Indígena de San Pedro (ASISPE)

Asociación Indígena del Pueblo Mbya Cheiro Ara Poty

Asociación Pai Tavyterá Reko Pave

Asociación Pueblos Indígenas de Canindeyú

Comunidad Cerro Poty

Comunidad Sarayacu

Urban Community of Niamey

Comunidad Xamok Kasek

Consejo Continental de la Nación Guaraní (CCNG) y Kueringi Moisekoty

Consejo de Pueblos Indígenas del Chaco (CPI Chaco)

Coordinadora de Líderes Indígenas del Bajo Chaco (CLIBCH)

Coordinadora Nacional de Organizaciones de Mujeres Trabajadoras Rurales e Indígenas (CONAMURI) y CONAMURI Juventud

Federación de Asociaciones de Comunidades Indígenas Guaraníes (Región Oriental)

Federación de Pueblos Indígenas del Chaco Paraguayo (FEPOI CHACO)

Federacion Nativa Aché del Paraguay (FENAP)

Federación por la Autodeterminación de los Pueblos Indígenas (FAPI)

Kuña Guarani Aty

Movimiento Pueblos Originarios (MPO)

Organización del Pueblo Enthlet Norte (OPEN)

Organización del Pueblo Guarani

Organización del Pueblo Nivaklé (OPN)

Organización del Pueblo Ñandeva

Organización Mismo Indigena (OMI)

Organización Nacional de Aborígenes Independientes (ONAI)

Organización Payipie Ichadie Totobiegosode (OPIT)

Red Juvenil Indígena

Union of Indigenous Communities of the Yshir Nation (U.C.I.N.Y)

Unión de Nativos Ayoreo del Paraguay (UNAP)